139-166

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 371. 77

THOMAS S. KING, PLAINTIFF IN ERROR,

vs.

JOHN W. DOANE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED AUGUST 11, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 371.

THOMAS S. KING, PLAINTIFF IN ERROR,

vs.

JOHN W. DOANE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

INDEX.

	Original	Print.
Writ of error	*a*	1
Clerk's return on writ of error	*b*	1
Assignment of errors	*c*	2
Complaint	1	2
Summons	4	3
Marshal's return	5	4
Answer	6	4
Reply	26	13
Minutes of trial	33	16
Verdict and judgment	34	16
Order granting stay, &c.	35	16
Verdict	36	17
Motion for new trial	37	17
Opinion of Judge Brewer on motion for new trial	38	17
Order overruling motion for new trial	43	19
Stipulation as to entry of judgment, &c.	44	20
Order vacating judgment, &c.	46	20
Judgment	47	21
Bill of exceptions	48	21
Testimony of Thomas S. King	48	21
Exhibit A—Letter Felt to King, November 17, 1883	55	24
B—Letter King to Felt, November 10, 1883	55	24
C—Letter Felt to King, December 20, 1883	56	25
D—Letter King to Felt, December 25, 1883	56	25

JUDD & DETWEILER, PRINTERS, WASHINGTON, MARCH 14, 1890.

	Original.	Print.
Exhibit E—Letter Felt to King, January 21, 1884	57	25
F—Letter King to Felt, January 24, 1884	58	26
G—Letter King to Felt, February 8, 1884	60	26
H—Letter Felt to King, February 11, 1884	61	27
I—Letter King to Felt, February 18, 1884	63	27
J—Letter Felt to King, February 22, 1884	64	28
K—Note of King to Pullman Iron and Steel Company, January 5, 1884	64	28
L—Letter King to Felt, February 25, 1884	65	28
M—Receipt of Felt to King, March 1, 1884	66	29
N—Letter Felt to King, April 19, 1884	67	29
O—Certificate of stock of Pullman I. & S. Co. to King	67	29
P—Letter King to Felt, April 24, 1884	68	30
B—Letter King to Felt, January 5, 1884	69	30
Deposition of Frank B. Felt	70	31
Exhibit A—Resolution of directors	95	41
Charge to jury	97	42
Bond	103	44
Citation and proof of service of same	107	45
Clerk's certificate	108	46

a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between John W. Doane, as plaintiff, and Thomas S. King, as defendant, a manifest error hath happened, to the great damage of the said defendant, Thomas S. King, as is said, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

U. S. Circuit Court Seal, Dist. of Minnesota.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of April, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the 111th year.

OSCAR B. HILLIS,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

b UNITED STATES OF AMERICA, *District of Minnesota,* } *ss:*

The answer of the judges of the circuit court of the United States for the district of Minnesota, in the eighth circuit, in within writ mentioned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States of America within mentioned in a certain schedule to this writ annexed, as within it is commanded.

U. S. Circuit Court Seal, Dist. of Minnesota.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Saint Paul, in the district of Minnesota, this 15th day of April, in the year of our Lord one thousand eight hundred and

eighty-seven, and of the Independence of the United States the one hundred and 11th year.

OSCAR B. HILLIS,
Clerk U. S. Circuit Court, Dist. of Minnesota.

[Endorsed:] Ent. 265 D. Law.

c In the Supreme Court of the United States.

THOMAS S. KING, Plaintiff in Error,
vs.
JOHN W. DOANE, Defendant in Error. } Assignment of Errors.

The plaintiff in error in the above-entitled action makes the following assignment of errors:

1st. The court erred in directing the jury to return a verdict for the plaintiff for the amount of the note sued on with interest.

And by the reason of the error aforesaid plaintiff now prays for a reversal of the judgment rendered therein.

HART & BREWER,
Att'ys for Plaintiff in Error.
F. B. HART,
Att'y for Pl'ff in Error in the Supreme Court.

1 SCHEDULE.

In the Circuit Court *for* the United States of America for the District of Minnesota.

JOHN W. DOANE, Plaintiff,
vs.
THOMAS S. KING, Defendant. }

Now comes John W. Doane, the plaintiff in the above-entitled action, who is a citizen of the State of Illinois, and sues Thomas S. King, who is a citizen of the State of Minnesota, for that on the 10th day of November, A. D. 1884, said defendant, Thomas S. King, made, executed, and delivered to this plaintiff his, said King's, promissory note, and then and thereby and for a valuable consideration promised to pay to said plaintiff or order, one year after date, the sum of seven thousand one hundred eighteen and fifty one-100 dollars, $7,118.50, with interest thereon at the rate of seven per cent. per annum from date until paid.

That no part of said note, either of principal or interest, has ever been paid.

Wherefore plaintiff demands judgment against said defendant for the sum of $7,118.50, together with interest thereon, at the rate of seven per cent. per annum, from said 10th day of November,
2 A. D. 1884, up to the time of the entry of judgement herein, besides the costs and disbursements of this action.

Dated December 2nd, 1885.

W. E. HALE,
Plaintiff's Attorney, Minneapolis, Minnesota.

Filed December 9th, 1885.

OSCAR B. HILLIS, *Clerk.*

3 STATE OF MINNESOTA, } ss:
County of Hennepin, }

W. E. Hale came before me personally, and, being duly sworn, doth say that he is the plaintiff's attorney in the above-entitled action; that the foregoing pleading is true to the best of his knowledge, information, and belief, and that the reason why this affidavit of verification is not made by said plaintiff is that said plaintiff is absent from the State of Minnesota, wherein resides affiant, said plaintiff's attorney; and further saith not.

W. E. HALE.

Subscribed and sworn to before me on this 4th day of December, A. D. 1885.

CHARLES B. PECK,
[SEAL.] *Notary Public, County of Hennepin, State of Minnesota.*

4 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

In the Circuit Court of the United States for the District of Minnesota.

J. W. DOANE
against } Summons.
THOMAS S. KING.

The President of the United States of America to the defendant above named, Greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of this court, in Saint Paul, county of Ramsey and State of Minnesota, and file your answer in said clerk's office within twenty days after the service hereof, excluding the day of such service, and if you fail to answer the complaint as aforesaid the plaintiff will take judgment against you for the sum of seven thousand one hundred eighteen and $\frac{50}{100}$ dollars ($7,118.50), with interest thereon, at the rate of seven per cent. per annum, from the 10th day of November, A. D. 1884, besides the costs and disbursements of this action.

For the marshal of the district of Minnesota to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America,
Seal U. S. C. C. the 9th day of Dec., 1885. Issued at my office, in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk.*

W. E. HALE,
Plaintiff's Attorney, Minneapolis, Minn.

[Endorsed:] United States circuit court, district of Minnesota. No. —. John W. Doane, plaintiff, *vs.* Thomas S. King, defendant. Summons. Returned into clerk's office and filed Dec. 11th, 1885. Oscar B. Hillis, clerk, by —— ——, deputy. W. E. Hale, plaintiff's attorney.

5 UNITED STATES OF AMERICA, *District of Minnesota,* } *ss:*

I hereby certify that I served the annexed summons on the herein-named defendant, Thomas S. King, personally by handing to and leaving with him a true copy thereof, at Minneapolis, in said district, on the 9th day of December, 1885.

H. R. DENNY,
U. S. Marshal.

10 miles	60
Service	2 00
Copy	20
	$2 80

6 In the Circuit Court of the United States in and for the District of Minnesota.

JOHN W. DOANE, Plaintiff,
vs.
THOMAS S. KING, Defendant. } Answer.

Comes now the defendant, Thomas S. King, and, answering the plaintiff's complaint in the above-entitled action, says:

I.

He admits the citizenship of the parties, plaintiff and defendant, as alleged in said complaint, and admits that at or about the date alleged in said complaint this defendant executed and delivered to the plaintiff his promissory note for the sum alleged in the complaint, and by its terms drawing interest and payable as therein alleged, and admits that no part of said note, either principal or interest, has ever been paid. Defendant also admits that said note contains a recital of a valuable consideration, but defendant denies that any valuable consideration was ever, in fact, given by the plaintiff or received by this defendant for or on account of said note.

II.

7 Further answering, this defendant says that the promissory note which is the subject of this action was executed in renewal of and by way of extension of time of payment on a certain other promissory note which was actually executed and delivered by this defendant on or about the 24th day of February, 1884, but which bore date January the 5th, 1884, whereby this defendant

promised to pay to the order of the Pullman Iron & Steel Company on the first day of October, 1884, the sum of sixty-six hundred and sixty-six & $\frac{66}{100}$ dollars, with interest at the rate of eight per cent. per annum, of which note the plaintiff falsely represented himself to be the owner and indorsee for value at the date of the execution and delivery of the note sued on in this case, as hereinafter more fully stated and alleged. Defendant says that the only semblance of consideration for the making of the note sued on in this action was the surrender and cancellation by plaintiff of said note dated January 5th, 1884, and that the facts concerning the execution of said original note and its consideration and the right and title of the plaintiff thereto and concerning the execution and delivery of the note now sued on are as follows and not otherwise, to wit: On or about the 15th day of October, 1883, the plaintiff in this suit, together
8 with Frank B. Felt, James P. Perkins, and George M. Pullman, completed the organization of a corporation under the general laws of the State of Illinois, the name of said corporation as fixed by its articles of incorporation being the Pullman Iron & Steel Company and its principal office and place of business being located at the town of Pullman, in Cook county, State of Illinois; and defendant alleges that in said month of October, 1883, and immediately upon the organization of said company, said Frank B. Felt was duly elected and ever since has been the acting secretary and treasurer of said incorporated company, and at the same time said Felt and the plaintiff in this action were each elected and ever since have been duly elected and acting members of the board of directors of said corporation. The business of said corporation as set forth in the articles of incorporation was to be, "A," the manufacture of iron and steel; "B," the manufacture of iron, steel, and other material into any merchantable form; "C," the fitting together of iron, steel, and other material into any structural form; "D," doing all such other things as are incidental of or conducive to the attainment of the above objects," and by its articles of incorpora-
9 tion the capital stock of said incorporated company was fixed at five hundred thousand dollars, divided into five thousand shares of one hundred dollars each. Defendant now alleges that from a time long prior to the organization of said company this defendant was and ever since continuously has been and still is a resident and citizen of the city of Minneapolis and State of Minnesota, and in the transaction of the purchase of stock in said incorporated company, hereinafter set forth, this defendant acted entirely upon representations and statements of fact made to him by the said Frank B. Felt as secretary and treasurer of said company and without any personal knowledge whatever concerning the organization, business, stock subscription, or any other matter pertaining to said incorporated company, and without any information whatever concerning any of the subjects aforesaid save and except the information derived from and communicated by said Felt, secretary and treasurer as aforesaid, as hereinafter more fully set forth.

Defendant also alleges that for several months prior to the actual execution of said original note dated January 5th, 1884, this de-

fendant had been in frequent communication and corre-
10 spondence with said Felt as secretary and treasurer as afore-
said concerning a proposed subscription to capital stock of said company, but up to the date of the actual execution of said original note no actual subscription to said capital stock had been made by this defendant and no valid or binding contract had been entered into for such subscription; but this defendant alleges that said original note dated January 5th, 1884, was executed and delivered by this defendant to the "Pullman Iron & Steel Company" as a final acceptance by this defendant of a long-standing proposition by said incorporated company, acting through its secretary and treasurer as aforesaid, to issue to this defendant one hundred shares of its said capital stock of the par value of ten thousand dollars, which issue of stock said company, by its secretary and treasurer as aforesaid, proposed and agreed to make to this defendant in consideration of the execution and delivery of said note, and the proposition and agreement of said company so to issue its stock to this defendant was the sole and only consideration for the execution and delivery of said note.

This defendant now alleges that at various times between
11 the date of the organization of said company and the actual
execution of said original and during the pendency of said proposition by said company to issue stock to this defendant as aforesaid the said Felt, secretary and treasurer as aforesaid, falsely and fraudulently represented to this defendant the following facts, viz: That the stock of said company was worth par or its full face value; that said company had engaged very extensively in the manufacture of a certain patent spike, called the bayonet spike, designed for use in the construction of railroads for the purpose of fastening the rails to the ties; that said spike had been adopted for general use by many of the leading railroads of the country, and that orders for the purchase of said spikes were coming in faster than the company could supply them, and so fast that the company dared not take further orders lest they should be unable to fill all their contracts; that some of said orders were taken at a profit of $1.50 per keg, and that all were taken at full prices and at a large profit; that the capital stock of said company had all been taken and paid for except the one hundred shares which was reserved for this defendant; that he, the said Felt, had invested a very
12 large amount of money in the stock of said company; that
the said Pullman and Doane hereinbefore referred to (the latter being this plaintiff) had together taken and paid for one hundred and seventy-five thousand dollars of the stock of said company (being 1,750); that they had paid for the same in cash and taken and paid for one hundred thousand dollars of said stock in cash at its par value, and that said company had an actual paid-up cash and invested capital nearly approximating to the amount of its authorized stock.

This defendant says that in executing said original note for the purchase of said stock he implicitly relied upon such representations, each and all of them, and believed them to be true; that he

had no knowledge, information, or reasonably convenient and accessible means of knowledge to the contrary as to each or any of the particulars above enumerated; that he was induced by said representations, each and all of them, to execute said note for the purchase of said stock, and that he would not have executed said note had not such representations been believed by this defendant to be true.

Defendant now alleges that said representations and each of them were false, and were so known to be by said Felt when they were made, and they were made for the purpose of inducing this
13 defendant to take stock in said company. Defendant alleges that in truth and fact said stock was not at that time worth par, and that it had not even a nominal value; that said company had not engaged extensively in the manufacture of said patent spike; that the same had not been adopted by many or any of the leading railroads of this country; that orders were not being received to any great extent for the purchase of said spikes, and that orders were not coming in faster than the company could supply them, and that no orders were taken at a profit of $1.50 per keg or at any considerable profit; but, on the contrary, defendant alleges that the manufacture of said spike was a pure experiment; that it had not and never has been introduced into common use by any of the leading or other railroads of the country, but then was and ever since has been a complete failure for the purpose for which it was designed; that no extensive or other than experimental orders were then or afterwards recived for the supplying of said spikes by said company, and that no orders were taken by said company for supplying said spikes at a profit of $1.50 per keg or at any considerable profit.

14 Defendant also alleges that it was not true that all the capital stock of said company had been taken and paid for, except the one hundred shares reserved for this defendant; that it was not true that the said Felt had invested a large amount or any amount in the capital stock of said company; that it was not true that the said Pullman and Doane had together taken and paid for one hundred and seventy-five thousand dollars of the stock of said company; that it was not true that they had paid for the same in cash, and was not true that they had taken and paid for one hundred thousand dollars of said stock, in cash, at its par value, and that it was not true that said company had any actual paid up or invested cash capital nearly or remotely approximating to the amount of its authorized capital, but, on the contrary, the facts concerning said matters were as follows, to wit:

At the date of the original organization of said company all the capital stock of said company was subscribed for by the said Felt, Perkins, Doane, and Pullman (the subscriptions of said Pullman being made by and in the name of one James H. Smith, who acted as a secret agent and trustee for said Pullman and who was his private secretary at the time), each of said persons agreeing to take and pay for twelve hundred and fifty shares of said
15 stock of the par value of one hundred and twenty-five thou-

sand dollars, it being stipulated in the contract of subscription, however, that said subscriptions in their entirety each and all of them should be fully paid up and satisfied by the assignment to the company of a certain patent issued by the United States Patent Office to said James P. Perkins, the same being the patent for the bayonet spike hereinbefore referred to; and defendant alleges that by resolution of the board of directors of said company passed on the 3rd day of December, 1883, said Doane, Felt, and Perkins at the time being members and constituting a majority of said board, the assignment of said patent was accepted as a full payment and satisfaction for all of said stock subscriptions, and stock certificates were directed to be issued and afterwards were issued to said several subscribers for the full amount subscribed by each and in the aggregate for the entire amount of stock authorized by the articles of incorporation of said company, and by said resolution it was further declared that all of said stock was thereby fully paid for and should be henceforth full-paid stock. Defendant now alleges that neither at the date of
16 the assignment of said patent to said company nor at any other date or time did said patent have any ascertained or established value; that the merits and utility of said patent were at that time purely conjectural and speculative, and that the same has since proved to be of no practical value or utility, and is, in fact, of no value, and defendant says that the issue of said stock as aforesaid was a mere sham and fraudulent device resorted to by the said Felt, Perkins, Doan, and Pullman in fraud and evasion of the law, designed by them and each of them to enable them to hold or sell the stock thus issued to them as and for full-paid stock and to obtain a fraudulent, unjust, and illegal advantage over other persons who might be induced to purchase portions of said stock and actually pay therefor in money or money's worth. Defendant alleges that up to the date of said assignment of said patent to said company the same was owned by said James P. Perkins, the original patentee, and that, as a matter of fact, none of said subscribers paid anything of value for their said stock so subscribed for by and issued to them. Defendant also alleges that the only property or capital owned by said company at the date of the execution and delivery of said note consisted of said patent; and this defendant says that from and before the actual organization of said company and until after
17 all of the transactions alleged in this answer there existed a wrongful, unlawful, and fraudulent combination between said Pullman, Doane, Perkins, and Felt, the purpose and design of which was to enable them to acquire, hold, and retain the greater part of the capital stock of said company without actually paying anything therefor and to sell the remainder of the stock to other persons for a sufficient sum to enable them to establish and start a manufacturing plant; and in pursuance of said scheme said parties, prior to the date of the execution of said note, built and partially equipped, at a cost of from fifty to seventy-five thousand dollars, upon land then owned by the Pullman Palace Car Company, another corporation, in which the said Pullman and Doane were each heavy stockhold-

ers, a small manufacturing plant, the money and material therefor being furnished by the said Pullman, Doane, and Felt, all of which was done with the mutual understanding and agreement among said parties that as owners of a majority of the stock in the Pullman Iron and Steel Company they would cause said company to purchase the same when completed, and so soon as they should be able to sell so much of stock previously taken and then held by them to outside parties as would realize funds adequate for such purpose and
18 thus to reimburse their outlays; and in pursuance of said original plan and as a part thereof, and to enable them the better to accomplish said object, said Pullman, Doane, Perkins, and Felt did afterwards, on the 12th day of April, 1884, each transfer to said Frank B. Felt, as trustee, one-half of the stock held by each of them, to be sold by said trustee nominally for the purpose of furnishing a capital for said company, but really for that and the additional purpose of purchasing said plant, and thus reimbursing said Pullman, Doane, and Felt as aforesaid.

Defendant alleges that ever since the organization of said company said persons, and particularly said Felt, had been actively engaged in obtaining subscriptions to the stock of said company, and immediately after said 12th day of April a small part of the stock thus transferred to said Felt as trustee was again transferred by him to persons who had thus subscribed for stock, but the amount thus realized was inadequate for the purpose aforesaid; and accordingly, on the 1st day of July, 1884, and in pursuance of said original plan and scheme, the further expedient and device was resorted to by said Pullman, Doane, Perkins, and Felt of causing said plant to be conveyed to said Pullman Iron & Steel Company and causing said Pullman Iron & Steel Company to execute thereon to the Merchants' Loan and Trust Company, a corporation of which the said
19 Doane was president, as trustee, a mortgage securing the mortgage bond of said Pullman Iron & Steel Company to the amount of one hundred thousand dollars, which conveyance and mortgage were then made, and the bonds of said Pullman Iron & Steel Company to the amount of $100,000, as aforesaid, were placed in the hands of said Merchants' Loan and Trust Company to be negotiated; and defendant alleges, upon information and belief, that the greater part of said bonds have passed out of the hands of said trustee; that said Felt has received eight thousand dollars in amount of said bonds, that sum being the full amount advanced by him and invested in said enterprise, and that the remainder are now held by the Pullman Bank, a banking corporation organized and doing business at said town of Pullman, in which the said Doane and Pullman are heavy and principal stockholders, in trust for the use and benefit of said Pullman and Doane, and for the purpose of securing to them, directly or indirectly, the amounts advanced in the construction of said manufacturing plant or as collateral for money advanced by said bank to said Pullman Iron and Steel Company, and by it used in the purchase of said manufacturing plant, and out of which moneys said Pullman and Doane have been or are to be reimbursed all their said outlays. Defendant says that he is

unable to allege definitely the form of said transaction, but he
20 alleges, upon information and belief, that said bonds have been issued and formally negotiated in some manner by said Merchants' Loan and Trust Co., as trustee, for the purpose of securing a reimbursing to said Pullman and Doane all moneys advanced by them and invested in said enterprise.

Defendant further alleges that when he executed and delivered said original note dated January 5th, 1884, it was distinctly stated and represented to this defendant by said Felt, secretary and treasurer as aforesaid, that said company could receive a note instead of cash legitimately, and would so receive it, inasmuch as he had made arrangements to discount the note promptly for the benefit of the company, and to that end it was mutually agreed that the defendant should transfer the stock in said company which was to be issued to him to the person who should discount said note as collateral security for the payment thereof, and this defendant at that time and ever since until after the bringing of the suit, and until a very short time preceding the filing of this answer, supposed and believed and was distinctly informed by said Felt, secretary and treasurer as aforesaid, that upon the delivery of said note the same was discounted by the Pullman Iron and Steel Company to said J. W. Doane, and that he advanced to said company the money thereon in con-
21 sideration of which said Pullman Iron & Steel Co. afterwards, on the 19th day of April, 1884, issued to this defendant as an original holder ten thousand dollars of its capital stock, being one hundred shares thereof; but this defendant now alleges that said statements and representations of said Felt were all false in fact, and that the facts concerning said transaction as consummated by said Felt without the knowledge of this defendant were as follows, to wit: Said Pullman Iron & Steel Company has never issued to this defendant any stock whatever, nor was there transferred to this defendant any of the stock held by said Felt as trustee as aforesaid, nor did said Doane pay to said company any money or anything of value whatever for said note, nor has said company in any way or at any time received anything therefor, but, on the contrary, said Felt, acting wrongfully, fraudulently, and in collusion with said Doane for the purpose of defrauding this defendant, did transfer said note to said Doane by indorsement as treasurer of said company, without any consideration whatever, and said Doane did thereupon transfer to this defendant one hundred shares of stock in said Co. held by him and for which he had paid nothing, which transfer was accomplished without the knowledge of this defendant, and in manner following, viz: Said Doane surrendered to said Felt, as secre-
tary and treasurer, he having charge of the stock transfer books
22 of said company, his certificate for six hundred and twenty-five shares of stock in said company, which was issued April 12th, 1884, and said Felt then and there issued to said Doane in lieu thereof a new certificate for five hundred and twenty-five shares of stock and issued in the name of this defendant a certificate for one hundred shares of said stock and sent the same to this defendant by mail, with the false statement that said Doane had advanced the money

to the Pullman Iron and Steel Company on said note, and requesting this defendant to sign a blank assignment of said certificate of stock and return the same to him to be delivered to the said Doane and by him held as collateral security for the payment of said note, and this defendant did accordingly sign said blank assignment and return said certificate as requested, and the same was delivered to said Doane and ever since has been and still is held by him.

This defendant says that he never purchased the stock so transferred to him; never had any contract or negotiation with said Doane for the purchase of said stock or any stock from him; that said stock was so transferred to this defendant wrongfully, fraudulently, and by fraudulent collusion between said Doane and Felt and is really spurious and wholly unpaid stock, and this de-
23 fendant renounces all claim whatever to said stock and the certificate thereof and says that the same still is and always has been, as between said Doane and this defendant, the property of said Doane and never of this defendant; and, further answering, this defendant says that said Doane held said original note until after its maturity; that on or about the 10th day of November, 1884, this defendant, being still entirely ignorant of all the facts hereinbefore alleged affecting the validity of said note and defendant's liability thereon, and still supposing that said Doane had discounted said note, and being again assured and informed by the agent of said Doane that he had so discounted and purchased the same or claimed to have so done, and being pressed by said Doane for payment thereof, did finally arrange with the agent and attorney of said Doane, who held the same for collection, to make a new note in renewal and extension of said original note, and in pursuance of said arrangement this defendant, on or about said 10th day of November, 1884, executed and delivered the note now sued on for the amount then appearing to be due by the terms of the original note, which was then surrendered to this defendant and cancalled, and at the same time, as a means of securing said extension, this defendant did deliver to said Doane's agent and attorney certificates for
24 170 shares of stock in the Minnesota Brush Electric Company, which shares were the property of this defendant, to be by the said Doane held as additional collateral security for the payment of said note.

This defendant says that plaintiff perpetrated a gross fraud upon this defendant in thus exacting and receiving from this defendant said note of November 10th, 1884, and said collateral security; that said plaintiff well knew at the time that this defendant was in no manner indebted to him upon said original note, and well knew that this defendant was ignorant of all the facts and circumstances hereinbefore stated affecting the liability of this defendant on said note, and well knew himself of the existence of all of said facts and circumstances.

Defendant says that both said original note dated January 5th, 1884, and the note now sued on were and are wholly without consideration and void; that they were obtained from this defendant by gross fraud and misrepresentation, as hereinbefore alleged; that

they never were of any binding force or validity as against this defendant, and this defendant has demanded the return to him of said certificates of stock in the Minnesota Brush Electric Company.

Defendant also says that he has never at any time exercised or sought to exercise any rights or privileges whatever as a stockholder in the Pullman Iron and Steel Company, and he utterly repudiates the entire transaction relating to the purchase of stock in said company and refuses to be bound thereby or by said note sued on in this action.

III.

And, further answering and by way of counter-claim herein, this defendant claims that he has demanded from the plaintiff the return of the one hundred and seventy shares of stock in the Minnesota Brush Electric Company referred to in the foregoing answer, and said plaintiff has refused to deliver the same to this defendant.

Defendant says that the same is of the actual value of $8,500.00 *dollars*, and that the plaintiff, by reason of the facts stated in the foregoing answer, all of which are hereby adopted as part of this counter-claim without repeating the same herein, has wrongfully converted said stock to his own use.

Wherefore defendant demands judgement against the plaintiff for said sum of $8,500.00 and for his costs and disbursements herein.

HART AND BREWER,
Attorneys for Defendant.

STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

Thomas S. King, being duly sworn, says that he is the defendant in the above-entitled action; that the foregoing answer is true of his own knowledge, except as far as the facts therein alleged are stated upon information and belief, and as to all such facts affiant verily believes the same to be true, as stated in said answer.

THOMAS S. KING.

Sworn to before me and subscribed in my presence this 10th day of March, 1886.

[SEAL.]

A. J. ROBINSON,
Notary Public, Hennepin County, Minnesota.

Filed March 10th, 1886.

OSCAR B. HILLIS, *Clerk.*

Time to file this answer is given until the 12th M'ch.
Dated M'ch 10th, 1886.

W. E. HALE.

26 In the Circuit Court of the United States in the District of Minnesota.

JOHN W. DOANE, Plaintiff,
vs.
THOMAS S. KING, Defendant.

Reply.

Now comes the plaintiff in the above-entitled cause, and for his reply to the answer of the defendant in said cause admits that said defendant made his promissory note, dated January 5th, 1884, for the sum of $6,666, with interest at the rate of eight per cent. per annum, payable to the order of the Pullman Iron and Steel Company on the 1st day of October, 1884; but plaintiff denies that the note in question, mentioned and described in the complaint herein, was given in renewal of and by way of extension of the time of payment of the note so made to the Pullman Iron and Steel Company, and alleges the fact to be that the said note upon which this action is brought was given in discharge of and in full satisfaction of the note so made to the Pullman Iron and Steel Company.

And plaintiff denies that at the date of the note so sued on in this action or at any other time he falsely represented to the de-
27 fendant that he was the owner and indorsee for value of the note so made to the Pullman Iron and Steel Co., but alleges the fact to be that at the time of the date of the note sued on in this case the plaintiff was and for a long time prior thereto and prior to the time when the same became due had continued to be the indorsee and owner and holder of said note for a full and valuable consideration.

Further replying to said answer, plaintiff admits that some time in the month of October, 1883, the plaintiff, together with Frank B. Felt and James P. Perkins, completed the organization of a corporation under the general laws of the State of Illinois; that the name of said corporation, as fixed by the articles of incorporation, was and is the Pullman Iron and Steel Company; that its principal office and place of business was and is located at the town of Pullman, Cook county, State of Illinois; that upon the organization of said company Frank B. Felt was duly elected and ever since has been the acting secretary and treasurer of said company, and that at the same time said Felt and this plaintiff were elected and have since continued to be acting members of the said board of directors of said corporation; that the business of said company, as
28 set forth in the articles of incorporation, was to be the manufacture of iron, steel, and other materials into merchantable form, the fitting together of iron, steel, and other materials into any structural form, and doing all such other things as are incidental or conducive to the attainment of the above objects; that by its articles of incorporation its capital stock was fixed at five hundred thousand dollars, divided into five thousand shares of one hundred dollars each.

Plaintiff denies that George M. Pullman was one of the incorporators of said company.

Plaintiff admits that from a time long prior to the organization of said company said defendant was and ever since has continued to be and still is a resident and citizen of the city of Minneapolis and State of Minnesota.

And, further replying to said answer, said plaintiff denies that in the transaction of the purchase of the stock mentioned in said answer in said company by said defendant he, said defendant, acted entirely upon representations and statements of fact made to him by the said Frank B. Felt as secretary and treasurer of said company or otherwise, and denies that said purchase was without any personal knowledge concerning the organization, business, and stock subscriptions, or any other matter pertaining to said
29 incorporated company, and denies that said purchase was without any information concerning any of the subjects aforesaid, save and except the information derived from and communicated by said Felt as secretary and treasurer or otherwise, as in said answer alleged or otherwise.

Plaintiff denies that for several months prior to the actual execution of said original note dated January 5th, 1884, said defendant had been in frequent communication and correspondence with said Felt as secretary and treasurer, or otherwise, concerning a proposed subscription to the capital stock of said company, and denies that up to the date of the actual execution of said original note no actual subscription to said capital stock had been made by said defendant, and denies that no valid or binding contract had been entered for such subscription; but the plaintiff alleges the fact to be that long prior to the time of the execution of said note said defendant had made and entered into a valid and binding contract for said capital stock and had subscribed for the same in writing.

Plaintiff admits that said note was executed and delivered to the Pullman Iron and Steel Company in satisfaction of said subscription to said stock, but denies that it was in acceptance of a
30 long-standing proposition by said company, acting through its secretary and treasurer, or otherwise, to issue to defendant one hundred shares of said capital stock of the par value of ten thousand dollars.

Plaintiff denies that the only consideration for said note was a proposition and agreement on the part of said company to issue said stock to said defendant, but alleges the fact to be that there was a further and additional consideration for said note, which was the stock itself issued by the said company to said defendant.

And, further replying to said answer, said plaintiff denies all that part of said answer commencing with the words "this defendant now alleges," in the 28th line of page three (3) of said answer, down to and including the words "were as follows, to wit," in the fourth line of page six (6) of said answer.

Further replying, except as hereinafter admitted or qualified, said plaintiff denies all that part of said answer commencing with the words "at the date of the original organization," in the fifth line of

page six (6) of said answer, down to and including the words "by said note sued on in this action," in the twenty-first (21st) line of page twelve (12) of said answer.

31 Plaintiff admits that at the time of the execution of the note sued on in this case the defendant, for the purpose of securing the payment of said note, delivered to the attorney of said plaintiff certificates for 170 shares of stock in the Minnesota Brush Electric Company, and that the same were the property of said defendant.

Replying to the alleged counter-claim of the defendant in his said answer, plaintiff admits that the defendant demanded a delivery to him of the 170 shares of Minnesota Brush Electric Company, and that said plaintiff refused to deliver the same; but plaintiff alleges that said demand was not made until long after this action had been commenced.

Plaintiff denies that said stock is of the value of $8,500.00 or any sum whatever.

And, further replying to said answer, said plaintiff denies each and every allegation, matter, and thing in said answer contained not hereinbefore admitted, qualified, or expressly denied.

Wherefore plaintiff asks judgment as in his complaint demanded.

Dated April 20th, 1886.

W. E. HALE,
Plaintiff's Attorney, Minneapolis, Minnesota.

32 STATE OF MINNESOTA, } *ss:*
County of Hennepin, }

W. E. Hale came duly before me personally and, being duly sworn, doth say that he is the plaintiff's attorney in the above-entitled action; that the foregoing pleading is true to the best of his knowledge, information, and belief, and that the reason why this affidavit of verification is not made by said plaintiff is that he is absent from the State of Minnesota, wherein resides affiant, said plaintiff's attorney; and further saith not.

W. E. HALE.

Subscribed and sworn to before me on this 20th day of April, A. D. 1886.

[SEAL.] CHARLES B. PECK,
Notary Public, County of Hennepin, State of Minnesota.

Filed April 22nd, 1886.

OSCAR B. HILLIS, *Clerk.*

33 *Term Minutes, December Term, A. D.* 1886.

United States Circuit Court for the District of Minnesota.

JOHN W. DOANE
vs.
THOMAS S. KING.

DECEMBER 21ST, 1886.

This cause being regularly called for trial, the plaintiff appears, by his attorney, W. E. Hale, Esq., and the defendant, by his attorneys, Hart & Brewer.

Thereupon, upon motion of plaintiff's said attorney, it is ordered that a jury come, to wit:

Adam Buck, Charles R. Criebe, John Deveraux, Joseph E. Cook, Blanchard Barrett, A. B. Easton, Thomas Robinson, Amos D. Ellsworth, John F. Dilley, James W. Wilson, L. L. Brown, and E. S. Terry—

Twelve good and lawful men, who are duly sworn to try the issues joined herein.

Thereupon the trial of said cause is proceeded with as follows, to wit:

W. E. Hale, Esq., opens the case for the plaintiff. Note sued upon introduced in evidence on behalf of plaintiff, and here the plaintiff rests.

34 Mr. Brewer opens the case for defendant. Thomas S. King sworn and examined on his own behalf. W. W. Rich sworn and examined for defendant. J. E. Leech sworn and examined for defendant. Deposition of Frank B. Felt read in evidence for defendant.

And here the defendant rests.

Mr. Hart sums up the case for defendant. Thereupon the court instructs the jury to find a verdict for the plaintiff for the amount of the note, with interest. The jury retire to consider of their verdict, and after due consideration concerning the same and being fully advised in the premises return into court and find their verdict in the words and figures as follows, to wit:

"We, the jury in the above-entitled case, find for the plaintiff and assess his damages at $8,171.00."

JOHN C. DEVERAUX, *Foreman.*

It is therefore considered, ordered, and adjudged that the above-named plaintiff do have and recover of and from the above-named defendant the aforesaid sum of eight thousand one hundred and seventy-one (8,171) dollars, so found to be due by the jury, besides his costs and disbursements herein to be taxed, and that he have execution therefor.

35 Thereupon, upon motion of defendant's attorneys, it is ordered that execution be, and it is hereby, stayed herein for the period of thirty days to present a motion for a new trial.

It is further ordered that the defendant be, and he is hereby, given ninety days from date hereof in which to settle and prepare a bill of exceptions.

36 United States Circuit Court of Minnesota.

JOHN W. DOANE, Plaintiff,
vs.
THOMAS S. KING, Defendant.

We, the jury in the above-entitled cause, find for the plaintiff and assess his damages at $8,171.00.

JOHN C. DEVEREUX, *Foreman.*

Filed December 21st, 1886.

OSCAR B. HILLIS, *Clerk.*

37 In the Circuit Court of the United States, District of Minnesota.

J. W. DOANE, Plaintiff,
vs.
THOMAS S. KING, Defendant.
Motion for a New Trial.

The defendant in the above-entitled action moves the court to set aside the verdict and grant a new trial, for the following reasons:

First. The verdict is not justified by the evidence and contrary to law.

Second. Because of error of law occurring at the trial and duly excepted to by the defendant, for that the court erred in directing the jury to find a verdict for the plaintiff for the amount of the note sued on, with interest.

HART & BREWER,
Attorneys for Defendant.

Filed February 21st, 1887.

OSCAR B. HILLIS, *Clerk.*

38 In the Circuit Court of the United States, District of Minnesota.

J. W. DOANE
vs.
THOMAS S. KING.
Motion for a New Trial.

Opinion.

BREWER, *C. J.:*

Action on a negotiable promissory note; verdict for plaintiff. The only question is, Was plaintiff a *bona fide* purchaser before maturity of the note, of which the one in suit is a renewal? The testimony discloses the fact that the original note was obtained by false representation; so the plaintiff was called upon to prove that he was a *bona fide* purchaser before maturity.

The facts are these: In the fall of 1883 the Pullman Iron and Steel Company was organized, with a capital stock of $500,000, divided into 5,000 shares of $100.00 each. The company was organized for the manufacture of a patent railway spike. The patent was owned by J. W. Doane, Jas. N. Smith, J. P. Perkins, and Frank B. Felt. They transferred the patent to the company, receiving in pay therefor the full capital stock, each taking one-fourth, or 1,250 shares.

The company then had the patent, but no money, and each
39 of the four stockholders held one-quarter of the stock, the same issued as fully paid and non-assessable. In order to raise money there seems to have been a mutual agreement between the four stockholders that 1,500 shares should be disposed of for cash, each stockholder contributing 375 shares.

Afterwards and after the transactions between defendant and the company were ended by a formal resolution 2,500 shares were placed in the hands of Felt as trustee. It would seem that Doane and Smith, being men of means, retained their 375 shares, and paid the fixed price, sixty-six and two-thirds cents, in cash into the company's treasury. Felt, who was the treasurer of the company, not having the money to pay in, was called upon by his associates to dispose of his shares for cash and put the proceeds into the treasury. Among other parties he applied to the defendant, who agreed to take one hundred shares. Not having the money therefor, after some delay he gave his note to the company and received his shares; but this note was not cash, and the company wanted cash, so the plaintiff proposed to Felt to discount his, Felt's, note and take the defendant's note as collateral. In this way the company got the money for the shares of stock taken by the defendant. Soon after the exe-

cution of Felt's note to plaintiff, plaintiff asked Felt if he
40 wished to hold this note of defendant's and dispose of his own stock; if not he would himself take the note and let the defendant have 100 shares of his, plaintiff's, stock. Felt, having raised the money necessary to cover the amount which he was bound to provide, and believing the stock good, concluded not to dispose of any more of his stock, and so the shares which were issued to defendant were shares which belonged to plaintiff. The transaction was consummated in this way: Plaintiff, having a certificate of 625 shares, surrendered it to the company and received a new certificate of 525 shares, and the company issued a certificate of 100 shares directly to defendant. All this was done without the knowledge of defendant. On the other hand, the false representations which were made to defendant, and in consequence of which he was induced to take stock and give his note, were all made by Felt, and plaintiff was entirely ignorant of them. Can there be a doubt upon these facts that plaintiff was a *bona fide* purchaser? He gave up a hundred shares of stock which were believed by the parties to be very valuable, and which were in fact worth something; at any rate, it was the very consideration for which defendant had given his note, and it was a consideration deemed ample

by the payee of the note. Certainly plaintiff, although a
41 director in the company, was not personally chargeable

with notice of any false representations made by Felt, the treasurer, although the company of which he was director might have been bound. Counsel say that the company received nothing; that it was not authorized to buy in its own stock, and Mr. Felt testifies, in answer to a question as to whether the company ever received anything from plaintiff, and, if so, what, in consideration of this note, answers: "Indirectly it possibly has, but directly I think not." But I do not so understand the import of the testimony. 375 shares belonging to Mr. Felt were, in fact, donated to the company, he doing the same in this respect as the other stockholders. For 100 shares of this stock he received a note payable to the company. The plaintiff advanced to the company upon Mr. Felt's note, secured by defendant's note, the cash; so the company got cash for this subscription of defendant's. It matters not what arrangements were subsequently made between Felt and the plaintiff, or what other moneys were obtained by Felt for the company or in what way. They were transactions purely personal to the individuals. Defendant received his 100 shares of fully-paid stock, as he contracted for; the company received the money, and the plaintiff parted with his one hundred shares. These are the
42 undisputed facts, and the mere form in which these transactions were carried out is immaterial.

The law looks at the substance and not at the form. Defendant got for his note that which he contracted to get. Plaintiff, in ignorance of any false representations made to defendant, purchased the note before maturity and gave value.

The verdict was right and must be upheld. The motion for a new trial is overruled.

Filed February 21st, 1887.

OSCAR B. HILLIS, *Clerk.*

43 *Term Minutes, December Term, A. D.* 1886.

United States Circuit Court for the District of Minnesota.

JOHN W. DOANE
vs.
THOMAS S. KING.

FEBRUARY 25TH, 1887.

Defendant's motion for a new trial having been duly submitted upon briefs of the attorneys for the respective parties: Now the court, after due consideration thereof and being fully advised in the premises, files its written opinion concerning the same. Pursuant thereto it is ordered that said motion be, and the same is hereby, overruled and denied.

44 In the Circuit Court of the United States, District of Minnesota.

JOHN W. DOANE, Plaintiff,
vs.
THOMAS S. KING, Defendant. } Stipulation.

It having been agreed and understood by and between the attorneys for plaintiff and defendant in the above-entitled cause that no judgment should be entered therein until after a decision upon the motion for a new trial, and it now appearing that, through inadvertence and oversight, judgment was entered in said cause on the verdict of the 21st day of December, 1886, and that by reason of the lapse of more than sixty days since said judgment was rendered defendant is precluded from prosecuting a writ of error so as to make the same operate as a supersedeas, as he desires to do: Now, therefore, it is hereby stipulated and agreed that an order may be made by the court in the above-entitled cause, whereby the judgment heretofore entered therein on the 21st day of December, 1886, may be vacated and set aside and a new judgment may be entered including interest on the verdict to the date of the entry of such new judgment.

45 It is also stipulated that in such new judgment the costs and disbursements of plaintiff, exclusive of and in addition to clerk's fees, shall be as follows:

Clerk's costs	$13 60
Statute costs	20 00
Marshal's fees	2 80
Three affidavits	75
	$37 15

Witness our hands this 7th day of March, 1887.

W. E. HALE,
Attorney for Plaintiff.
HART AND BREWER,
Attorneys for Defendant.

46 In the Circuit Court of the United States, District of Minnesota.

JOHN W. DOANE, Plaintiff,
vs.
THOMAS S. KING, Defendant. }

Pursuant to the stipulation hereto attached it is hereby ordered that the judgment entered in said cause on the 21st day of December, 1886, be, and the same hereby is, vacated and set aside; and it is further ordered that a new judgment on the verdict, including interest on such verdict to the date of the rendition, be now entered in said cause. Done and ordered by the court this 8th day of March, 1887.

R. R. NELSON, *Judge.*

Filed March 8th, 1887.

OSCAR B. HILLIS, *Clerk.*

47 United States Circuit Court for the District of Minnesota.

Law Register " D," page 265.

MARCH 8TH, 1887.

The judgment entered in this cause on the 21st day of December, 1886, having been this day vacated and set aside: Now, pursuant to a stipulation filed herein, it is hereby considered, ordered, and adjudged that the above-named plaintiff do have and recover of and from the above-named defendant the sum of eight thousand one hundred and seventy-one (8,171) dollars, the amount of the verdict found by the jury, and interest thereon from December 21st, 1886, amounting to $119.16, besides the costs and disbursements, taxed at $37.15, and that he have execution therefor.

Attest: OSCAR B. HILLIS, *Clerk*,
By L. P. RICHARDSON, *Deputy*.

Damages	$8,171	
Interest	119	16
Costs	37	15
Total	$8,327	31

48 In the Circuit Court of the United States, District of Minnesota. December Term, 1886.

JOHN W. DOANE, Plaintiff,
vs.
THOMAS S. KING, Defendant,
} Bill of Exceptions.

Be it remembered that at the regular term of said court begun and held in the city of St. Paul on the 13th day of December, 1886, the above-entitled cause came on for trial on the 21st day of December, 1886, before the Hon. David J. Brewer and a jury, and upon said trial the following proceedings were had, to wit:

The plaintiff introduced in evidence the note duly executed by the defendant, set up and described in his complaint, and rested his case. The defendant thereupon introduced the following evidence:

THOMAS S. KING, being first duly sworn, testified as follows:

I am the defendant in this case. I am acquainted with Frank B. Felt; have known him 15 years or more. He resided in Minneapolis in the fall of 1883. He is secretary and treasurer of the "Pullman Iron and Steel Company." I knew him quite intimately prior to the fall of 1883. That fall the subject of the "Pullman Iron & Steel Co." was discussed between us. I never made
49 any written subscription to the stock of that company. I had no knowledge or means of knowledge concerning the affairs of this company, its capital, organization, or what it was doing, aside from what Mr. Felt told me. I had frequent interviews with Mr. Felt in the fall of 1883. He was back and forth

frequently perfecting the organization of the company. I saw him several times during the months of October, November, and December of that year. He stated to me as the results of his efforts this company had been organized with a capital stock of $500,000. He stated to me that George M. Pullman and John W. Doane, of the Pullman Palace Car Company, to whom this patent spike had been shown and who had had the thing thoroughly examined by experts, had become largely interested; that it had been pronounced the finest thing of the kind they had ever seen and sure to be a great success; that Mr. Doane and Mr. Pullman were taking a very large interest in the company and were organizing works to be established at Pullman. I am not positive of the amount of stock given to Mr. Perkins for the royalty in the purchase of the patent, but as near as I can remember it was $75,000 for the purchase of this patent. The spike was called "the Bayonet spike." He represented to me that Mr. Doane and Mr. Pullman were each taking
50 $75,000 worth, for which they were paying into the treasury 66 and two-third cents on the dollar; that he himself was taking a like amount. This money was to be devoted to building the plant and construction of machines for the manufacture of this spike. He stated in addition that Mr. Doane and Mr. Pullman had taken $1,000,000 of stock at par; that all the stock was subscribed for, and later that it was all paid for but mine, and he was urging me to fix this matter up. He stated that the stock was worth par, and that they had been compelled to refuse a number of applications for the stock. He stated that the $100,000 that Pullman and Doane had taken at par was for working capital. During this time and later, perhaps, he represented that all the balance of the stock was taken at par. The three lots at $75,000 each were all that was to be sold at less than par. He represented to me also that they were receiving large orders for the spike. The witness further identified certain exhibits, copies of which are hereto attached as Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "L," "M," "N," and "P," as being respectively letters written by him to Frank B. Felt, secretary and treasurer of the Pullman Iron and Steel Company, and by said Felt to him, and testified that the said letters written by him were sent to said Felt and those written by said Felt were received by him.

51 He further stated that the Exhibit "K" was the note originally executed by him to the "Pullman Iron and Steel Company," and that the date of its execution was on or about February 25th, 1883. He further stated that the certificate of stock, a copy of which is hereto attached as Exhitit "O," was the certificate originally issued to him by the "Pullman Iron and Steel Co.," and which was enclosed to him in Felt's letter of April 19th, 1884. In connection with his identification of the Exhibit "J," the witness stated that "the enclosed paper *herein* referred to therein" was the note which he gave to the "Pullman Iron and Steel Company," and said note was identified by him and is hereto attached as Exhibit "K," as aforesaid. In connection with his identification with the letter marked Exhibit "N," the witness stated: "I did not get my

stock certificate immediately on sending the note; it was sent to me by letter on the 19th of April, 1884." Concerning the Exhibit "O," the witness stated that it was a certificate for stock received by him, and that the signature on the blank assignment of the stock was his.

The witness further testified: In carrying out that transaction I relied implicitly upon Mr. Felt and the representations made by him. I believed him to be a young man of truth and veracity
52 and business integrity. I also believed that Mr. Doane had actually advanced the money on my note. I had no doubt of it. I believed with confidence that my note had gone to the Pullman Iron and Steel Company in payment for that stock. I first learned the falsity of some of these representations a little time previous to the maturity of the note now sued on, which was given in renewal of the first note. When the note sued on in this case was renewed I still believed all these statements, and believed that Mr. Doane was the *bona fide* owner and holder of that note. I had not the slightest idea of the falsity of any of the representations made to me. I was residing at Minneapolis at the time. I had never visited Pullman. I had no information with reference to the affairs of the company further than what I received from Mr. Felt. When my first note became due I had other enterprises on hand and they required the use of more money than I had anticipated, and sources from which I had expected funds failed to yield them to me, and I found it was getting to be inconvenient for me to take care of that note. I received my information as to the falsity of these representations by letter from Mr. Felt written in August, 1885. When the first note became due I received notice of its being in the bank for collection.

I had reason to believe it was in Chicago, and the fact that
53 there was no sale for the stock was a disappointment to me, but I presumed that Mr. Doane was the innocent holder of the note for value. I knew none of the facts upon which I now base my defense. The note was claimed and represented to be the property of Mr. Doane at that time. I was unable to pay it, and renewed it for the one sued upon in this case, payable to J. W. Doane. The difference in the amounts of the two notes is accounted for by the interest being added. Additional security was demanded of me, and I gave, in addition to the Pullman Iron and Steel Company stock held by Mr. Doane, $8,500.00 of stock in the Brush Electric Company. There was no new consideration for the last note. It was simply a renewal and extension of time.

Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O were offered and read in evidence.

Cross-examination:

I cannot state definitely as to when my last conversation was had with Mr. Felt prior to the time of sending on the first note. He was back and forth between Minneapolis and Chicago up to the time they were getting the plant under way and less frequently

after the plant started, and I might or might not have seen him after October, 1883, when that note was given. I don't positively remember that I saw him after October 5th, 1883. Whenever he was in the city he would call upon me. As to the particular dates of the visit, I couldn't fix them now. I sent him the letter now shown me (which was marked and read in evidence, marked Plaintiff's Exhibit "B;" a copy of the same is hereto attached).

54

Re-examination:

I can't fix definitely the time any particular conversation was had with Mr. Felt in the fall of 1883. Whenever I saw him—he was frequently in Minneapolis—he would enlarge upon the brilliant prospects of the business they were doing. The statements were made to me in the course of these conversations. I never made any agreement, either verbal or written, to take stock prior to the time I gave my note.

55

EXHIBIT "A."

"PULLMAN IRON AND STEEL COMPANY,
PULLMAN, ILL., *Nov.* 17*th*, 1883.

DEAR TOM: If convenient, please remit one-half amount of subscription to stock, amounting to $3,333.33. Any time before the 15th will answer.

We are progressing finely, and everything looks very flattering, having had application from three companies to start other works at different places. I am confident we have the best thing in the country, and the outcome will make us all happy; will see you about the 25th, and advise you of progress and the decision of directors as to starting other companies, either in stock or royalty.

Yours, FRANK."

EXHIBIT "B."

"MINNESOTA BRUSH ELECTRIC CO.,
MINNEAPOLIS, MINN., *Nov.* 10*th*, 1883.

MY DEAR FRANK: Yours of the 7th at hand. I have a deal on hand which ought and I believe will pan out before the 15th, and I will respond as soon as it does. I expect to be in Chicago very soon; next week, possibly, and certainly not later than the week following. Will it answer if I make the payment then? You have no idea of how d—d tight money is up here, and I sometimes feel like getting tight myself, but think I am sure of being "easy" in a few days; glad to know of the promising outlook. Let me hear from you.

56

Yours very truly, T. S. KING."

EXHIBIT "C."

"PULLMAN IRON AND STEEL CO.,
PULLMAN, ILL., *Dec. 20th*, 1883.

T. S. King, Esq.

DEAR TOM: Please send check as soon as possible as find it necessary to raise. I closed contract for 12,000 kegs spikes last night, at a profit of $1.50 per keg—a good start. Everything lively and well under way.

Very truly, FRANK."

EXHIBIT "D."

"MINNESOTA BRUSH ELECTRIC CO.,
MINNEAPOLIS, MINN., *Dec. 25th*, 1883.

57 MY DEAR FRANK: Yours of the 20th at hand. I am compelled to tax your patience just a little longer, but before another week goes over my head expect to remit the amount of my assessment.

I am sorry to annoy you, and it annoys me much more than you, but I will "get thar" directly, if not sooner. Glad to know matters are looking so bright, and you will find me prepared for "dividends" when they come if I am a little slow on this first assessment. Merry Christmas.

Yours truly, T. S. KING."

EXHIBIT "E."

"PULLMAN IRON AND STEEL CO.,
PULLMAN, ILLS., *Jan'y 21st*, 1884.

DEAR TOM: It would be a great accommodation if you could remit at least one-half of the subscription it being the only one unpaid. If not convenient to send the entire subscription, send the first installment. The contracts are all about completed and have had to call on all subscribers to cover the amount due them; have about covered the entire amount past week. I would not write it if it was not this way. I had 75,000 to sell and Pullman and Doane had 75,000, which they took themselves. This was to build
58 our works, and they took $100,000 par for capital. You see, have had to call on them for all, and now I want to close mine as soon as possible. If the stock is not worth 200 per cent. in eight months I will be greatly mistaken. Our spike has been adopted by many of the leading roads and orders coming in too fast for us. Now figuring on the Eastern factory. Our machinery works to a charm. Best made spike in the country. Bring it as soon as you can and oblige—

Yours, FRANK."

EXHIBIT "F."

"MINNESOTA BRUSH ELECTRIC CO.,
MINNEAPOLIS, MINN., *Jan'y* 24, '84.

DEAR FRANK: Yours of the 21st at hand. I have been kicking myself for the last ten days, and hoping and expecting every day to send you the money for the first assessment, at least. I have $4,000 of Farnham & Lovejoy's paper, payable June 15th, 1884 (dated January 2nd), and drawing 7 per cent., which a party assured me he would buy. and is liable to take it any day, but he is acting for Eastern parties, and the anticipated funds have not yet arrived. The banks will not discount paper longer than three months, and I am therefore compelled to depend on outside parties like the
59 one mentioned. I have delayed writing you from day to day, hoping each day that the next would bring me the cash. I am still expecting it daily and will remit promptly, or, if you can discount the notes there, will send them to you at once. Money is perhaps easier there than here. I would be willing to allow a discount of 5 per cent. (if necessary), or at the rate of five per cent. per annum—I mean in addition to the 7 per cent. the notes draw—and you place the amount thus realized from said notes to my credit in your books. I will endorse them and have my wife do so, if you wish. I think well of your enterprise, and am more than sorry that I have been so tied up as to put you to so much trouble, but it looks now as though I were getting out of the woods. I am decidedly anxious to pay this assessment at once, and may have negotiated the notes and sent the money by the time this reaches you. Sincerely hope so. If not, can you make use of the paper as above? Let me hear from you.

Yours truly, T. S. KING."

60 EXHIBIT "G."

"MINNESOTA BRUSH ELECTRIC CO.,
MINNEAPOLIS, MINN., *Feb'y 8th*, 1884.

DEAR TOM: Your favor received. Since I last wrote you matters of vital importance in which I am largely interested here at home have taken an unexpected turn, and in order to protect property investments already made I am obliged to immediately put in a very considerable amount of money. This will require the use of the funds I had set aside for your enterprise (and which I could otherwise have sent you to-day), very much to my regret, for I am exceedingly reluctant to let go any proposed interest with you. I have about $50,000 locked up in logs, but can get no cash out of them before October 1st, so that does not relieve present needs. I am very sorry, indeed, to have caused you so much annoyance in this matter, and, in addition to that, to be so placed as to disappoint you entirely, but the matters are beyond my control, and I can't help it. By Oct. 1st I shall be on my financial pins, and if my note, payable at

date, would be satisfactory to you I can send it at once, and would be glad to do so, or I would give you full-paid stock in this company to the amount I am desirous of holding in yours.

61 I make these suggestions for your consideration, and if neither will serve your purpose I must, from force of circumstances, relinquish all idea of taking the interest talked of in your company. You can't imagine how sincerely I regret the situation, but it is as it is, and I can't help it.

Pardon me for all the trouble I have put you to. Act as you deem best in the premises, let me know your decision, and believe me—

Sincerely yours, T. S. KING."

EXHIBIT "H."

"PULLMAN IRON & STEEL CO.,
PULLMAN, ILL., *Feb'y 11th*, 1884.

DEAR TOM: Yours 8th received this morning. It places me in a very unpleasant position in this way: 1st, we was obliged to refuse a great many applications for stock when we accepted what we did, and now it would not look well for us now to ask them to take it after telling them it was all taken. Upon receipt of your letter I made arrangements to discount the note at 6 per cent., which I considered a good thing for you, and expected it this morning to use.

I believe that we have here the best thing in the country, and
62 from the way railroads are taking hold think we will show 25 per cent. the first year. We have booked all the orders at full prices we dare to, and are now about ready to start full blast.

If you could make a four months' note for $4,000 I could use that, and I will discount one for the balance myself for 6 or 7 mo's. Had I known this before would have been glad to have done it all myself, but some I have out, am in the same position, can't get in. You can see, Tom, the position it has placed me in with the other stockholders. I have guaranteed all the subscriptions that I have taken and now must make it good. If I did not think that I had the best thing here would not say a word. I am going East to-day, to be gone a week, to close some large contracts; in the meantime see what you can do and let me know by time I get back. I can use 4,000.00 of paper, and had arranged to use F. & L. If you can get it, can use it or yours, with endorsement. The banks here require it. If you cannot arrange this let me know what you can do, and I will try and arrange it in some way upon my return.

Very truly yours, FRANK B. FELT."

63 EXHIBIT "I."

"MINNESOTA BRUSH ELECTRIC CO.,
MINNEAPOLIS, MINN., *Feb'y 18th*, 1884.

DEAR FRANK: Yours of the 11th came duly to hand. I appreciate the situation as you describe it, and have delayed writing until this time, hoping to bring about a settlement of a matter in

which I have the funds you need, and considerably more, locked up, but can't do it, and must therefore come back to first principles and do the best I can, viz: I will send you my note for the amount, $6,666.00, due Oct. 1st, 1884, at 8 per cent., and until it is paid you may hold the $10,000 of stock as security, giving me a receipt showing what the transaction is. Your security will thus be ample and you can discount the note to meet present needs. If I can get funds in, as I hope and expect to do, at an earlier date than above named would be glad to take the note up before maturity, of course, but must fix a time which will render it certain that I shall not disappoint you or be disappointed myself.

I trust that you can arrange matters on this basis, and, if so, will close it up at once.

Let me hear from you, and oblige,

Yours truly, T. S. KING."

64 EXHIBIT "J."

"PULLMAN IRON & STEEL CO.,
PULLMAN, ILLS., *Feb'y 22nd*, 1884.

DEAR TOM: I just arrived from a trip East. Have made arrangements to start another manufactory at Pittsburgh. We are having great demand for our spikes. Think we could fill two more factories with work if we had them. I expect to see this stock worth a great premium within a year. My own could not be bought. We are about ready to start our mill. I have made arrangements to use the enclosed paper as requested, which please sign and return.

Very truly yours, FRANK B. FELT."

EXHIBIT "K."

"$66,666.66. MINNEAPOLIS, MINN., *Jan'y 5th*, 1884.

Oct. 1st, 1884, after date I promise to pay to the order of the Pullman Iron and Steel Company sixty-six hundred sixty-six & $\frac{66}{100}$ dollars, at First National Bank, value received, with interest at the rate of 8 per cent. per annum until paid.

65 No. —. Due —. THOMAS S. KING."

Indorsements: "Pullman Iron and Steel Co., Frank B. Felt, treasurer. Frank B. Felt."

EXHIBIT "L."

"MINNESOTA BRUSH ELECTRIC CO.,
MINNEAPOLIS, MINN., *Feb'y 25th*, 1884.

DEAR FRANK: Yours of the 22nd at hand, and I herewith return the note, duly signed. Please return a receipt which will cover the transaction and show that you hold my $10,000 of full-paid stock as security for the payment of said note, so that in case either of us should be "snuffed out" meanwhile, our administrators might have an easy job. Am delighted to know of the brilliant prospects

of the company, and trust it will pan even larger than you anticipate. Our electric light business is "climbing." We have just secured a contract for the complete lighting of the new West Hotel from top to bottom, sixty-five arc and 2,500 Swan incandescent lamps, the biggest private plant in this or any other country
66 and an immense card for our Brush-Swan system.

Let me hear from you occasionally as to the progress of your business; am greatly obliged to you for your kindness in this matter.

Very truly yours, T. S. KING."

EXHIBIT "M."

"PULLMAN IRON AND STEEL CO.,
PULLMAN, ILLS., *March 1st*, 1884.

Received of T. S. King, Minneapolis, Minn., note dated January 5th, 1884, for $6,666.66, due Oct. 1st, 1884, at First National Bank, Minneapolis; interest 8 per cent. per annum. When paid, full-paid stock is to be issued to T. S. King for $10,000 in the Pullman Iron and Steel Company.

FRANK B. FELT, *Treasurer*."

67 EXHIBIT "N."

"PULLMAN IRON AND STEEL CO.,
PULLMAN, ILLS., *April 19th*, 1884.

DEAR TOM: Enclose you certificate of stock for 100 shares. Please endorse in blank on back of the same. Mr. Doane advanced the money on it, and this is to be held by him until note is paid, when stock will be returned to you. This should have been done when note was made, but just made our issue of stock and now do this to close up the books. We are running in good shape. The leading iron man of the country, after looking over our works last week, said he thought the stock would double in a year and double again and pay good interest on the same. We are having large demand. Please sign and return at once and oblige—

Yours, FRANK B. FELT."

EXHIBIT "O."

Number 31. 100 shares.

The Pullman Iron & Steel Co.

This certifies that Thomas S. King is the owner of one
68 hundred shares of the capital stock of the Pullman Iron and Steel Company, transferable only on the books of the company, in person or by attorney, on the surrender of this certificate.

In witness whereof the president and secretary have
[SEAL.] affixed their signatures under the corporate seal of said company, at Pullman, Ills., this 19th day of April, 1884.

FRANK B. FELT, *Secretary*.
W. E. BARROWS, *Vice-Pres*."

Assignment on Back of Certificate.

"For value received, — hereby assign to —— —— the shares of stock within mentioned, and authorize —— to make the necessary transfer on the books of the company.

Witness — hand and seal this — day of ——, ——.

THOMAS S. KING,

—— ——.

Witnessed by—

—— ——."

EXHIBIT "P."

"MINNESOTA BRUSH ELECTRIC CO.,
MINNEAPOLIS, MINN., *April 24th*, 1884.

Frank B. Felt, Esq., sec'y Pullman Iron & Steel Company, Chicago, Ills.

69 In other words, DEAR FRANK: Your favor of 19th, enclosing certificate No. 31 for 100 shares of the capital stock of the Pullman Iron and Steel Company in my name, is just received, and, as requested by you, I herewith return it, enclosed in blank, to be held by Mr. Doane until my note of Jan'y 5th, 1884, for $6,666.66, due Oct. 1st, 1884, is paid, when said certificate is to be returned to me.

Am delighted to hear of the flattering prospects of the company. The value of the stock can't double too often to suit,

Yours very truly, THOS. S. KING."

PLAINTIFF'S EXHIBIT "B."

"MINNESOTA BRUSH ELECTRIC CO.,
MINNESOTA, MINN., *Jan. 5th*, 1884.

DEAR FRANK: I expect to send you the amount of my past-due assessment—just how much was it?—next week, sure. Please tell me if I shall make the draft payable to you as treasurer. I have at last closed the trade I have been laboring for, but had to take notes in lieu of cash. A party has agreed to discount a few thousands for me next week, and then you will hear from me promptly.

Meanwhile I am greatly obliged for your patience in the matter.

Yours very truly, T. S. KING."

70 The def't further offered and read in evidence the deposition of Frank B. Felt in words following:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the United States Circuit Court for the District of Minnesota.

JOHN W. DOANE }
vs.
THOMAS S. KING. }

Be it remembered that on this 7th day of December, A. D. 1886, personally appeared before me, Horace S. Oakley, a notary public in and for the county of Cook, in the State of Illinois, Frank B. Felt, of Pullman, in said county and State, to testify on the part of the defendant in the above-entitled cause.

And the said Frank B. Felt, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows:

Direct examination by Mr. BREWER:

Int. 1. State your name, age, residence, and occupation.

A. Frank B. Felt; age, thirty-three; occupation, secretary
71 and treasurer of the Pullman Iron & Steel Company.

Int. 2. Are you acquainted with John W. Doane and Thomas S. King, plaintiff and defendant in this action; and, if so, how long have you known each of them?

A. I am acquainted with both of them; have knows Thomas S. King between ten and fifteen years and John W. Doane about six years.

Int. 3. When was the Pullman Iron and Steel Co. organized and how long have you been its secretary and treasurer?

A. It was organized in October, 1883, and I have been secretary and treasurer since that time continuously.

Int. 4. As such secretary and treasurer did you have negotiations and correspondence in the latter part of 1883 and the early part of 1884 with Thomas S. King relating to a subscription to or purchase of stock by him in the Pullman Iron and Steel Company?

A. I had correspondence with Mr. King in relation to his subscription to the stock, but whether it was as an individual correspondence or as secretary and treasurer of the company I cannot recall.

Int. 5. What was and is the total authorized capital stock of the Pullman Iron and Steel Co.?

A. Five hundred thousand dollars.

Int. 6. What is the amount of the shares?

72 A. Five thousand shares of one hundred dollars each.

Int. 7. Were all those shares subscribed for at the date of the organization of the company or immediately thereafter; and, if so, by whom and in what amounts?

A. The stock was all subscribed for by J. W. Doane, James H. Smith, J. P. Perkins, and Frank B. Felt; twelve hundred and fifty shares each.

Int. 8. In what manner was the stock so subscribed paid for by the persons you have named?

A. By the transfer to the company of a certain patent for an improvement in railway spikes.

Int. 9. To whom was that patent issued and by whom was it assigned to the company, as stated in your last answer?

A. The patent was originally issued to J. P. Perkins. Afterwards one-quarter interest was transferred to each—J. W. Doane, George M. Pullman, and Frank B. Felt. Afterwards George M. Pullman transferred his one-quarter interest to James H. Smith. Then the entire patent was transferred by J. W. Doane, James H. Smith, J. P. Perkins, and Frank B. Felt to the company.

Int. 10. Were the transfers which you have mentioned made in writing; and, if so, are they or any of them now in the possession of the Pullman Iron and Steel Company or of yourself as its secretary and treasurer?

73 A. The transfers were sent to Washington for record. This is my best recollection. I cannot now state whether they are now in my possession or in the possession of the attorney that made the transfers.

Int. 11. Were certificates of stock issued to the various persons you have mentioned as having subscribed for the entire capital stock of the company; and, if so, when were they so issued?

A. Certificates of stock were issued at the time or soon after the organization of the company. Certificates of stock were issued December 3rd, 1883.

Int. 12. At that time certificates were issued to each of the four persons you have specified were they of twelve hundred and fifty shares each?

A. They were.

Int. 13. Who was the real owner of the stock issued in the name of James H. Smith?

A. That I cannot say. I suppose it to be James H. Smith.

Int. 14. Was there any reason talked of and understood among the subscribers to the stock for issuing it all in consideration of the assignment you have mentioned? If there was any such reason state it.

74 A. The patent was considered of great value and was issued in payment of the full capital stock, thus making the stock full paid and non-assessable.

Int. 15. What is the fact as to whether the patent was at that time, meaning the time when the stock was issued and the patent assigned, in the nature of an experiment or a matter of established practical value?

A. It was considered of established practical value.

Int. 16. Had any spikes been manufactured under the patent at the time the stock was issued, and had they at that time been put into practical use anywhere?

A. A machine had been built and quite a number of spikes had been made for experimental purposes, and the opinion of numbers of railroad men had been taken as to its utility. They had not been

put into practical use, only in an experimental way, and spikes had been sent to numerous railroads for test.

Int. 17. I find by reference to a certified copy of articles of incorporation and stock subscription that the subscription was actually made some time prior to the 8th day of October, 1883, to be
75 paid for by the assignment of the patent. Do you now say that any spikes had been manufactured prior to that time?

A. I saw spikes that were manufactured prior to the organization of this company.

Int. 18. Can you state when the experimental manufacture of spikes began?

A. I cannot definitely state the time, but I know that for between one and two years prior to the organization of the company experts and mechanics were at work building machinery for its manufacture.

Int. 19. After the issue of all the stock, as you have already testified, what action, if any, was taken for the purpose of enabling the company still to control and handle some portion of that stock?

A. One-half of the capital stock of the company was donated to the treasury of the company to be sold, the proceeds from which to be used for building a plant and as a working capital for the company.

Int. 20. Please state when that was, and also produce the original resolution, if any, passed by the company, excepting what you have termed the donation of stock, and cause a copy thereof to be attached to your deposition as an exhibit.

76 A. The resolution was passed and stock transferred April 12th, 1884. Copy of said resolution is hereunto attached and marked "Exhibit A."

Int. 21. Now, state fully what transfers of stock were made in pursuance of the resolution to which you have just referred, and state particularly how many shares of the capital stock of the Pullman Iron and Steel Company were owned by J. W. Doane after the resolution of April 12th, 1884, was carried into effect.

A. Upon that date the book showed that J. W. Doane owned six hundred and twenty-five (625) shares of stock after the transfer was made. Six hundred and twenty-five shares of the capital stock were transferred by each of the four original holders to Frank B. Felt as trustee.

Int. 22. After the resolution of April 12th, 1884, was carried into effect, then I understand that each of the original subscribers held six hundred and twenty-five shares and you, as trustee, held twenty-five hundred shares. Is that correct?

A. Quite an amount of this stock had been subscribed for under the understanding that they should buy certain amounts of the treasury stock to be donated to the company, and quite an amount of this treasury stock was transferred to the purchasers of the same the same day, same having been paid for. The transfer books
77 of the company show that at that date each of the original holders held six hundred and twenty-five shares and I, as trustee, held the rest of it, except so far as it had been issued to subscribers on the same day or previously.

Int. 23. Examine the promissory note now handed you, a copy of which will be made an exhibit to this question marked "Exhibit B," and state what that note was given for, if you know, and also state when it was actually executed, if you know.

A. During the fall of 1883 there was a number of subscribers to the treasury stock that was to be issued by the Pullman Iron and Steel Company or a company to be organized. Among those subscribers or parties agreeing to take this stock was Thomas S. King. During the early part of 1884 all or a large portion of the subscribers to that stock had paid the amount of their subscriptions, and I think it was at the suggestion of Mr. King that he gave his note for the amount of his stock subscription, and this is the note that he so gave. I cannot say the exact date upon which it was given.

Int. 24. Was the transaction of the business which resulted in the giving of this note conducted by a correspondence between you and Mr. King, and if it was have you in your possession the letters written by King up to and including the one in which that
78 note may have been sent to you? If you have them in your possession will you please produce them?

A. A portion of the transaction under which this note was given was by letter. I have not got all those letters in my possession.

Int. 25. Will you now please state whether the note to which attention has already been called was received by you as an officer of the company from Mr. King, and also what you did with it; whether it in any way came into the hands of the plaintiff in this suit, and, if it did, what was the transaction through which he received it?

A. I, as an officer of the company, received it from Mr. King. Soon after the receipt of this note it became necessary for the company to have funds, and it was assumed that I, as one of the interested parties to this company, should provide a certain amount of money by the sale of stock, and Mr. Doane, claiming that I had not provided the full amount, offered to discount my own note and take this note of Thomas S. King as a collateral against the same. Soon after the execution of my note to J. W. Doane he asked me if I wished to hold this note of King's and dispose of my own stock, I having raised the money necessary to cover the amount of this subscription; if not, he would take the note and assign to Thomas S. King one hundred shares of his stock. This was before the
79 company had commenced operations, and it looked as if it would be a very profitable institution, and I told him that I did not care to dispose of any — my stock. So on April 19th, 1884, J. W. Doane transferred one hundred shares of his stock. The same was assigned to T. S. King and held as collateral by J. W. Doane against the note given by King. The note that I gave to J. W. Doane, upon which the money was advanced, has been paid by me.

Int. 26. You say that it was assumed that you should provide a certain amount of money by the sale of stock. Do you mean by that it was claimed that you had bound yourself in any way to realize for the company a certain amount of money by the sale of stock? Please explain more fully what the claim was.

A. It was agreed that fifteen hundred shares of this stock should

be sold at a certain price, one-half of said stock being taken by the two subscribers. Upon my coming to Chicago I found that it was understood that Mr. Perkins and myself were to place the other one-half of that stock.

Int. 27. The note which was given to Mr. Doane and discounted by him, the King note being collateral, was of what date and executed by whom?

A. It was of the date of March 8th, 1884, and executed by myself individually.

Int. 28. Can you now state when your note was paid?

80 A. I think about September 1st, 1884.

Int. 29. You say that on April 19th, 1884, Mr. Doane transferred one hundred shares of his stock. Please state how that was done, what officer of the company attended to the transfer, what certificate, if any, was surrendered by Mr. Doane, and whether a wholly new certificate was issued to Thomas S. King or otherwise. State the facts fully.

A. That was done by a certificate of transfer under date of April 19th, 1884, to Thomas S. King by J. W. Doane. Mr. Doane surrendered his certificate of 625 shares, dated April 12th, 1884, and a new certificate was issued to him for five hundred and twenty-five shares, under date of April 19th, 1884, being the amount of his original certificate of shares, less the amount transferred to Thomas S. King, and a certificate of one hundred shares was issued to King. The certificate of stock was signed by W. E. Barrows, vice-president, and Frank B. Felt, secretary.

Int. 30. The stock which Doane surrendered and was transferred to King was stock that was originally issued in consideration of the patent, was it not?

A. It was.

Int. 31. Now, has the Pullman Iron and Steel Co. ever received anything from Mr. Doane—and, if so, what—in consideration of the King note which was transferred to him in the manner you have described?

A. Indirectly it possibly has, but directly I think not.

81 Int. 32. If there was anything further in the transaction by which Doane received the note, or any consideration moving from him to the Pullman Iron & Steel Company, please state it.

A. No; there is no consideration that the company received.

Int. 33. Was any of the stock of the Pullman Iron and Steel Company ever sold by that company at par on the basis of payment in money?

A. There was none of the stock sold by the company on the basis of par.

Int. 34. Referring now to the stock that was transferred by the original holders to you as trustee, aggregating, as I understand it, twenty-five hundred shares, at what rate was so much of that sold as was sold, and state how much of it was sold.

A. Of the twenty-five hundred shares transferred to me as trustee fifteen hundred shares of that stock was sold at sixty-six and two-thirds cents on a dollar, the proceeds of the same being used to erect

a manufacturing plant. At that time the balance of one thousand shares it was intended should be held and sold for an operating capital upon the basis of par.

Int. 35. Has the one thousand shares referred to in your last answer ever been sold; and, if so, when?

A. The majority of it is still held by me as trustee.

82 Int. 36. Had any portion of the one thousand shares referred to been sold by the company prior to the first of February, 1884?

A. I can't say whether there was or not; I don't remember. I think not.

Ints. 37 & 38 and the answers thereto were excluded on defendant's objection.

Int. 39. When did the company, as such, get its works in operation and begin the actual manufacture of the patent spike?

A. I do not remember the exact date, but I think in May, 1884; possibly a little earlier.

Int. 40. When, if at all, did it receive its first orders for the spikes, and will you please enumerate all the orders received by the company from its organization down to January 1st, 1884?

A. I cannot give without further reference the exact dates upon which orders were received.

Int. 41. Are you able to specify any orders received by the company for spikes prior to the 1st day of January, 1884?

A. At this time I cannot specify any orders received before that time. I know that before the commencement of operations by the company large numbers of orders had been received.

Int. 42. Can you now specify any of the orders so received before the commencement of operations by the company?

83 A. I think that we had received orders from the Denver & Rio Grande road, Minneapolis, Sault Ste. Marie & Atlantic road, Louisville and Nashville road, Ohio Central railroad, and several others. Soon after the organization of the company circulars and sample spikes were sent to many of the leading railroads of the country and a large number of inquiries and orders were received.

Int. 43. Have you as secretary and treasurer of the company possession of the records of the company, its books, and the orders received by the company for the patent spikes prior to the 1st day of January, 1884; and, if so, will you now state specifically therefrom all the orders so received by the company prior to the 1st day of January, 1884?

A. I have not got the records with me where I could give the desired information.

Int. 43½. The records and information requested are in your possession as secretary and treasurer of the company, are they not?

A. I cannot say that they all are, as many of the inquiries and orders were given verbally, and at that time the works of the company were not in operation; consequently they could not be filled.

Int. 44. Where orders were given verbally was there not

84 some memorandum made of it in the books of the company?

A. There was not until about the time the works were ready to operate.

Int. 45. In answer to the interrogatory 42 you have spoken of an order for spikes from the Denver and Rio Grande road. Now, was that order given verbally or in writing and from what officer or agent of the company was it received and where was such officer or agent located?

A. That order was given in writing, but by what officer I cannot state. I think it came from the general offices at Denver. It was first given by the purchasing agent in St. Louis verbally, afterwards in writing from general offices in Denver.

Int. 46. In answer to the same interrogatory you refer to orders received from the Sault Ste. Marie & Atlantic, the Louisville and Nashville, and the Ohio Central. Can you now state as to each of those whether it was in writing, and, if so, from what officers or agents of the respective companies they were received and from what place or places?

A. I think they were all in writing, but, not having the original orders at hand, I cannot give the other information desired.

85 Int. 47. To what extent, if at all, has this patent spike been introduced among the railroads of the country, and is it in general use by any—and, if so, what—railroads in the country at the present time?

A. The spike has been quite largely introduced and is being used by several railroads at the present time; among them, we are filling large orders from the Atchison, Topeka & Santa Fé and Wabash, St. Louis & Pacific railroads; orders of about six thousand kegs from those two roads.

Int. 48. Referring again to the treasury stock, so called, what amount of that stock, if any, has been issued or transferred to the plaintiff Doane since the same was placed in your hands as trustee?

A. Three hundred and seventy-five shares.

Int. 49. At what time did he receive those shares?

A. They were issued May 13th, 1884. I cannot state the date of his receiving them.

Int. 50. At what time, if at all, did the Pullman Iron and Steel Company acquire title to what is known as their present plant? How much land have they in connection with it and from whom did they acquire it?

86 A. I do not know the exact date of the deed. The ground was deeded by the Pullman Palace Car Company, and contains, as I remember, about three and three-quarter acres.

Int's 51, 52, & 53 and the answers thereto were excluded on defendant's objection.

Int. 54. At the same time you say that three hundred and seventy-five shares of stock were issued to Mr. Doane, the plaintiff, or soon thereafter? State whether any—and, if so, what—amount was issued to James H. Smith.

Adjourned to Wednesday, the 8th of December, 1886, at 10 o'clock a. m.

Met, pursuant to adjournment, Wednesday, the 8th of December, 1886, at 10 o'clock.

Int. 55. What business relation, if any, did James H. Smith sustain to George M. Pullman at the time of the original stock subscription and subsequently?

A. I think his title was private secretary.

Int. 56. Was any of the stock of the Pullman Iron and Steel Company—and, if so, what amount—issued to James H. Smith or Mr. Pullman after the transfer of the one-half to you as trustee; and, if so, to which of them was the stock issued and when?

87 A. Under date of April 12th one-half of the stock of the Pullman Iron and Steel Company was transferred to me as trustee by the original subscribers. James H. Smith surrendered his original stock certificate for twelve hundred and fifty shares, and a new certificate for six hundred and twenty-five shares issued to him. Since that date there has been no treasury stock issued to Mr. Smith or to Mr. Pullman.

Int. 57. Did Mr. Pullman at any time contribute anything to the capital of this company, or purchase or agree to purchase or actually acquire from the company any of its stock? If so, give the details.

A. Mr. Pullman, by cash or through the Pullman Palace Car Company, paid the Pullman Iron and Steel Company for three hundred and seventy-five shares of stock. The same has not been issued. He is and has been entitled since that time to have the stock issued to him.

Int. 58. Did either Mr. Pullman or Mr. Doane contribute anything further than what you have stated—that is, Pullman paying for three hundred and seventy-five shares and Mr. Doane paying for three hundred and seventy-five shares; if so, what and when?

A. They have not bought any stock of the company above the amounts mentioned.

88 Int. 59. When the present Pullman Iron & Steel Company's plant was conveyed to it by the Pullman Palace Car Company were the buildings and machinery about completed and ready for commencing the actual operations of manufacturing, and how had the amounts paid in by Pullman and Doane respectively been paid in?

A. When the conveyance was made by the Pullman Palace Car Company to the Pullman Iron and Steel Company the buildings and machinery were about completed, but before the beginning the erection of the plant the amount of land and site to be conveyed to the company was located. The subscription of Mr. Doane, amounting to twenty-five thousand dollars, was paid in cash. The amount of twenty-five thousand dollars paid by Mr. Pullman was partially in cash and partially in an account of the Pullman Car Company for material bought of them during the building of the plant, the same being assumed by him, which was the same as cash to the company.

Int. 60. State as nearly as you can the total cost of the plant up to the 1st day of July, 1884.

A. About one hundred and twenty-five thousand dollars.

Int. 61. Have you individually ever purchased and paid for any portion of the capital stock of this company aside from what you acquired by the assignment of the patent to the company; if so, when and what amounts? I mean by this to inquire whether you have ever directly contributed any money to the capital of the company in consideration of treasury stock issued or to be issued by you?

89

A. To make up the seventy-five thousand dollars of stock that it was assumed I should take or place I placed with the company eight thousand dollars, for which I was to take stock or see that it was placed. This would entitle me to as much as that would buy at sixty-six and two-third cents. Afterwards I sold this stock, and then I left the money for the use of the company.

Int. 62. So that the money that you put in, if unpaid, stands in the nature of a loan to the company, does it?

A. It does, and was left there with the intention of taking it out in stock or otherwise.

Int. 63. Are you able from your knowledge of the affairs of this company as secretary and treasurer to state what amount of the one-hundred-thousand-dollar-loan secured by the mortgage of July 1st, 1884, has actually been floated by a sale of the bonds and what use has been made of the proceeds of said bonds? If so, state fully.

A. Twenty-five thousand dollars of those bonds were sold and the proceeds used in the operation of the company. The rest of the bonds, I believe, are yet in the hands of the Merchants' Loan and Trust Company as trustee. A portion of the balance of the bonds, in place of selling them, the Pullman Bank advanced the company money and the bonds are—my impression is that a portion of those bonds are held by the Merchants' Loan and Trust Company as collateral for the Pullman Bank.

90

Int 64. Have you, since your examination on yesterday, made further examination of the books of your company, so that you are now able to state what orders were received by your company for spikes prior to the 1st day of March, 1884? If so, please state fully, giving names, dates, and amounts.

A. On February 1st we received the order from the Ohio Central road for thirty kegs of spikes. On February 2nd we had a telegraph proposition from the same source for one thousand kegs, which we did not accept, owing to our inability to furnish them, and we have entered, prior to that order, upon our order book an order for fifteen hundred kegs for the Minneapolis, Sault Ste. Marie & Atlantic; an order for one hundred and ten kegs for the Denver and Rio Grande road; an order for six kegs to the Louisville & Nashville road, and after the entries for the Ohio Central road an order for five hundred kegs from the Milwaukee & St. Paul road; an order of one hundred and twenty-five kegs for the Burlington, Cedar Rapids and Northern, and an order for five hunded kegs for the Northern Pacific road. The original order of the Burlington, Cedar Rapids and Northern was for two hundred kegs. This order was received some time in February, and from the entries on the

91

order book I am confident that all of these orders were received prior to March 1st. In addition to the above orders, we had inquiries under date of January 2nd, 1883, from the Credit Valley railway for spikes in quantities of from five to one hundred tons; also inquiries for spikes from the Grand Trunk railway; also from the New York Central railway for two hundred kegs, which we were unable to fill; also from the Pennsylvania railway—part of these were for orders and part were inquiries if we could fill orders and for prices; also inquiries and orders from large numbers of railways that we were unable to fill.

Int. 65. I understand that the orders which you have enumerated in the last answer down to that portion of the answer in which you say, "In addition to the above orders we had inquiries," etc., are all the orders that are booked upon the order book of the company prior to March 1st for the purpose of being filled? State whether this is correct; and, if not, explain fully.

92 A. All of those orders mentioned in the first portion of my answer were received in the regular course of business, received and entered for that purpose. There were several other orders for small lots that I have not enumerated there, and there were orders after them of which I cannot give the exact date. Those mentioned in the latter part of my answer were not entered upon our order book to be filled on account of our inability to fill them.

Int. 66. Have you since your examination on yesterday made such search that you are now able to say whether you have in your possession any of the letters received by you from Mr. King relating to the matters in issue in this case, and *relate* to the transaction in which the note sued on was given, written prior to May 1st, 1884? If you have any or all of such letters please produce them. If not, please state what became of them.

A. All letters that I have been able to find from Mr. King prior to that date are in the hands of Mr. Hale, attorney for plaintiff.

Int. 67. State, if you please, who were the members of the first board of directors of the Pullman Iron and Steel Company, and over what period their services extended?

93 A. The first board of directors of the Pullman Iron and Steel Company were John W. Doane, O. S. A. Sprague, James P. Perkins, Frank B. Felt, and John A. Leach. They were elected for one year beginning October 8th, 1883.

Cross-examination by Mr. HALE:

X Int. 1. When and in what manner was the subscription for stock in this company made by Thomas S. King?

A. Some time during August or September, 1883, I met Mr. King on Washington avenue, in Minneapolis. He remarked that he understood that I was interested in a certain enterprise, and asked me if there was any opportunity to make some money out of it. I told him that I was interested in that patent, and a company would be organized for the working of the patent, which was explained. He

said he would like an opportunity to get into it. Soon after that time I met Mr. King and told him that a certain amount of that stock would be offered at a certain price of sixty-six and two-thirds cents on a dollar. Some time later, which I think was prior to October 1st, 1883, Mr. King subscribed for one hundred shares of said stock, the subscription, as I now remember, being in writing.

94 Objection to that portion of the answer relating to the subscription, because it appears that subscription was in writing and answer is not the best evidence thereof.

This objection was sustained by the court.

By the WITNESS: I told Mr. King in relation to the enterprise that from the best information that I had and from the parties who were interesting themselves in it and statements that had been made to me that it would be a good thing, but, like all other enterprises of this kind, there was a certain speculation about it; that it would either be a big thing or possibly nothing at all.

X Int. 2. State, if you know, what has become of this written subscription to this stock.

A. My recollection of this subscription, as well as some others, was sent to Mr. Perkins at Chicago. Where they are now or what disposition was made of them I cannot say.

FRANK B. FELT.

Subscribed and sworn to before me this 8th day of December, A. D. 1886.

[SEAL.] HORACE S. OAKLEY,
Notary Public.

95 Copy.

EXHIBIT A, FRANK B. FELT. Horace S. Oakley, Notary Public.

Whereas full-paid-up stock has been issued in payment for the patent purchased by this company in accordance with a resolution heretofore adopted by its directors on the 3rd day of December, 1883; and

Whereas it has been deemed advisable, for the purpose of putting the company into successful operation, to raise a certain amount in cash; and

Whereas the parties to whom the stock was issued in payment for said patent are opposed at the present time to any increase of the stock of the company or to placing the stock of the said company upon the market, and for the purpose of obviating at the present time the necessity of the increase of the capital stock, and for the purpose of providing a working capital for this company have agreed to and have transferred to Frank B. Felt as trustee twenty-five hundred shares of the full-paid stock of this company upon the express condition that it shall not be placed upon the market, but shall be sold by said Felt as trustee only to the donors of the
96 said stock or to such persons as they may in writing approve, so that it shall net as large an amount of cash as possible, which sum so realized shall be paid into the treasury of the said

company, to be used for its working capital, and shall be credited to the said donors as a contribution for said purpose: Now, therefore, be it

Resolved by the directors of this company, That the said transfer of the said twenty-five hundred shares of the full-paid stock to Frank B. Felt as trustee upon the above conditions be accepted by this company, and that said Felt, as trustee, shall be authorized to sell the said stock to the donors of the said stock or to any such person or persons as they may in writing approve, so that it shall net as large an amount in cash as possible, and to pay the said sum so realized into the treasury of this company to be used for its working capital, and that said sum should be credited to the donors as a contribution for said purposes.

A true copy.

[SEAL.] HORACE S. OAKLEY,
Notary Public.

97 The defendant rests.

No further evidence was offered by the plaintiff, and the foregoing was all of the evidence offered and all of the evidence introduced upon the trial of said cause; and thereupon, and after argument to the jury, the court directed the jury to find a verdict for the plaintiff for the amount of the note sued on, with interest, and accompanied said direction with the following remarks:

GENTLEMEN OF THE JURY: I have no doubt in this case the defendant has been atrociously swindled, and if there was any way within the power of the court as to the parties in this case to relieve him I should take great pleasure in doing it. I feel constrained to say the rules of law compel a verdict against him. Ordinarily I might be contented with stating that fact, but I think it is fair to him, to you, and to the counsel that I explain those rules of law, so you can see how it is.

Mr. King was induced to take stock in this Pullman Iron and Steel Company. He had been acquainted for some years, as I understand it, with Mr. Felt, a gentleman who had been a resident of Minneapolis and engaged in business there. He had confidence in him and took his representations as to what this Pullman Iron and Steel Company was doing, how much stock each had, how
98 much had been paid in, and on the strength of those representations he took this stock, received certificates of stock, and made his note. He had so much confidence in Mr. Felt he didn't write to Mr. Doane; didn't write to Mr. Pullman or any of those persons to see whether Mr. Felt was telling the truth, but, as one honest man, believing Mr. Felt to be an honest man, trusted to Mr. Felt, and Mr. Felt has deceived him.

Now, there is not a syllable *to* testimony in this case here to show that Mr. Pullman or Mr. Doane or Mr. Smith ever said a word to this defendant, nothing to show that he ever asked for any information whether Mr. Felt had said anything other than the exact truth as to the fact of how much stock they had. There is no testimony

what they paid Mr. Perkins for that patent. They sold the patent for $500,000.00 of stock. Whether these three gentlemen paid Mr. Felt $100,000 or $500,000 does not bear upon the matter. It may have been a valuable patent or it may have been worthless. That does not matter. They sold it for $500,000 of stock and got the stock. Mr. Felt started out to get subscriptions and got Mr. King's subscription by these false representations, which must undoubtedly be binding upon the company, but they are not binding upon any stockholder in it who does not know of them and is not a party to them.

99 There were only four stockholders at first, but you can readily see—take an insurance company or any other company, take this Electric Brush Company—it would not do for forty-nine men innocent of the falsity of the representations of one to be bound by those false statements of one stockholder. There is no testimony that Mr. Doane or Mr. Pullman or Mr. Perkins ever knew of those representations on the part of Mr. Felt. The note was payable to the company. It was endorsed to Mr. Doane for a hundred shares of stock. He had 625 shares of stock and he surrendered one hundred shares. He transferred his stock to the company and the company transferred it to Mr. King, so Mr. King got his stock to which he was entitled and the company disposed of the shares it received. If there was anything in the testimony to show that Mr. Doane was party to this transaction, that he was responsible for the imposing upon Mr. King, there would be something to fix upon, but there is not. He got this note indorsed by the company, and Mr. King is taken in by the fraud perpetrated by Mr. Felt.

The law is well settled that one who is in possession of a promissory note endorsed before it is due is presumed to be the *bona fide* holder of the note. You have got to show he has been guilty of wrong or the law says he is the *bona fide* holder and nothing

100 can be taken against him. This decision has been made in the interests of business so that we would be able to hold negotiable notes. Mr. Felt endorsed this note before it was due and after it was settled between him and the company, and the company is not chargeable with any fraud perpetrated by Mr. Felt. The rule operates very harshly at times, but it has been settled at every court, from the Supreme Court down to the lowest, that under those circumstances the man who holds the note is the *bona fide* owner of it.

The plaintiff is entitled to a verdict for the full amount of the note, with interest.

To which direction to the jury to return a verdict for the plaintiff the defendant, by his counsel, excepted at the time.

And thereupon, to wit, on said 22nd day of December, 1886, the jury returned into court their verdict, in conformity with the direction of the court, in the sum of $8,170.00 in favor of the plaintiff, against the defendant.

Whereupon the defendant prayed for a bill of exceptions, and, by consent of parties and the order of the court, plaintiff was allowed 90 days in which to settle and have bill — exceptions signed; and,

whereas none of the aforesaid matters are of record, this above bill of exceptions is duly allowed, signed, and sealed during the term this 14th day of March, 1887.

101 & 102 DAVID J. BREWER,
Circuit Judge.

The foregoing bill of exceptions, examined by me, is found to be correct.

March 9th, 1887.

W. E. HALE,
Attorney for Plaintiff.

Filed March 18th, 1887.

OSCAR B. HILLIS, *Clerk.*

103 Supreme Court of the United States.

THOMAS S. KING, Plaintiff in Error,
vs.
JOHN W. DOANE, Defendant in Error. } Bond.

Know all men by these presents that we, Thomas S. King, as principal, and Charles A. Pillsbury and W. D. Washburn, as sureties, all of Hennepin county, State of Minnesota, are held and firmly bound unto John W. Doane in the sum of twelve thousand dollars, to be paid to the said John W. Doane, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 28th day of March, 1887.

Whereas the above-named Thomas S. King hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of Minnesota, the plaintiff in error herein being defendant and the defendant in error herein being plaintiff in said circuit court:

104 Now, therefore, the condition of this obligation is such that if the above-named Thomas S. King shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THOMAS S. KING. [SEAL.]
CHARLES A. PILLSBURY. [SEAL.]
W. D. WASHBURN. [SEAL.]

Signed, sealed, and delivered in presence of—
A. T. SAFFORD,
As to Charles A. Pillsbury.
F. J. LEAVENWORTH,
As to D. W. Washburn.
T. M. DILL,
As to all.

105 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Be it remembered that on this 28th day of March, 1887, personally appeared before me Charles A. Pillsbury and D. W. Washburn and Thomas S. King, to me personally known to be the same persons who executed the foregoing bond, and they each acknowledged that they executed the same freely and voluntarily.

T. M. DILL,
[SEAL.] *Notary Public, Hennepin County, Minn.*

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Charles A. Pillsbury and W. D. Washburn, being duly sworn, each for himself, on his own oath, says that he is a resident and freeholder of the State of Minnesota, and is worth the sum of twelve thousand dollars over and above all his debts and liabilities and exclusive of his property exempt from execution.

CHARLES A. PILLSBURY.
W. D. WASHBURN.

106 Subscribed and sworn to before me this 28th day of March, 1887.

T. M. DILL,
Notary Public, Hennepin County, Minn.

The foregoing bond and the sureties thereon are satisfactory to me.

W. E. HALE,
Attorney for Doan, Defendant in Error.

Filed April 8th, 1887.

OSCAR B. HILLIS, *Clerk.*

The within bond and the sureties thereon are approved and supersedeas allowed this 31st day of March, 1887.

DAVID J. BREWER,
Judge U. S. Circuit Court.

107 United States of America to John W. Doane, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and district of Minnesota, wherein Thomas S. King is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable D. J. Brewer, judge of the circuit court of the United States for the eighth circuit, this 31 day of Mar., in the year of our Lord one thousand eight hundred and eighty-seven.

DAVID J. BREWER,
Circuit Judge.

Service of the foregoing citation is admitted by me this 2nd day of April, 1887.

W. E. HALE,
Att'y for J. W. Doane, Def't in Error.

[Endorsed:] Ent. 265 D. Law. In the Supreme Court of the United States. Thomas S. King, plaintiff in error, *vs.* John W. Doane, defendant in error. Citation. Filed Apr. 8, 1887. Oscar B. Hillis, clerk. Hart & Brewer, attorneys for plaintiff in error, Minneapolis, Minnesota.

108 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, *ss:*

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 107 pages, numbered consecutively from 1 to 107, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment, and all other proceedings in said cause and of the whole thereof as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 15th day of April, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and 11th year.

Seal U. S. Circuit Court, Dist. of Minnesota.

OSCAR B. HILLIS, *Clerk*,
By L. P. RICHARDSON, *Deputy.*

[Endorsed:] United States circuit court, district of Minnesota. John W. Doane *vs.* Thomas S. King. Return to Supreme Court.

Endorsed on cover: Minnesota C. C. U. S. No. 371. Thomas S. King, plaintiff in error, *vs.* John W. Doane. Filed August 11, 1887.

Office Supreme Court U. S.
FILED,
OCT 13 1890
JAMES H. McKENNEY,
CLERK.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1890.

No. 77.

THOMAS S. KING, PLAINTIFF IN ERROR.

vs.

JOHN W. DOANE.

BRIEF FOR PLAINTIFF IN ERROR.

F. B. HART, Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 77.

THOMAS S. KING, PLAINTIFF IN ERROR,

vs.

JOHN W. DOANE.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This action was originally brought by Doane against King, plaintiff in error, in the Circuit Court of the United States for the District of Minnesota, and was based upon a promissory note, duly executed and delivered by King to Doane on the 10th day of November, 1884, for $7,118.50, with interest from date at the rate of seven per cent. per annum.

The answer admits the jurisdictional allegations of diverse citizenship, and the execution, delivery and non-payment of the note, and affirmatively avers that the note sued on was executed as a simple renewal of a certain other promissory note, which bore date January 5th, 1884, but which was actually executed on or about February 24th, 1884, whereby King promised to pay to the order of the Pullman Iron & Steel Company, on the first day of October, 1884, $6,666.66, with interest at the rate of eight per cent. per annum, of which note Doane falsely claimed to be the owner and indorsee for value when the note sued on was executed.

It is further alleged that the only consideration for the execution of the note sued on was the surrender and cancellation of the former note; that the former note was obtained by fraud and

false representations, and was without consideration, all to the knowledge of Doane, who is alleged to have acted in collusion with the person who actively perpetrated the fraud; that the indorsement and transfer of the original note to Doane was wholly without consideration, not *bona fide*, or in due course of business, and that the renewal was executed by King in total ignorance of the fraud, which had been perpetrated upon him, and upon the false representation by Doane, through his agent, that he was the *bona fide* owner of said first note.

The facts, constituting the fraud, and relating to the transfer of the first note to Doane, are alleged in detail in the answer, and since no question arises as to the sufficiency of the pleading, or the relevency of the evidence, they will be summarized herein in a statement of the evidence introduced upon the trial.

There was a reply, properly verified upon information and belief by Doane's attorneys, and upon the issues thus formed a jury trial was had before his Honor, Judge Brewer, then Circuit Judge for the Eighth Circuit. (The complaint, answer and reply are embraced in original pages 1 to 32 of the printed Transcript of Record).

Upon the trial, the plaintiff introduced his note and rested. The defendant offered and introduced evidence tending fully to sustain the allegations of his answer in all essential particulars, and rested, and no further evidence was offered by the plaintiff, except the letter, "Plaintiff's Exhibit B." (T. of R., original page 97, and "Plaintiff's Exhibit B," last half of original page 69).

Thereupon, after argument to the jury by counsel, the court, upon its own motion, instructed the jury peremptorily to return a verdict for the plaintiff for the amount of the note sued upon, with interest, to which instruction and direction the defendant, by his counsel, duly excepted. (T. of R., original pages 97 to 101).

The jury returned their verdict in accordance with the order of the Court (original page 34), final judgment was entered thereon on the 8th day of March, 1887, for $8,327.31 (original page 47), a Bill of Exceptions was signed during the term (original page 101), embracing all the evidence in the case (original page 97), and this Writ of Error was duly prosecuted to this Court.

It will be observed that the case rests upon the uncontradicted testimony offered by the defendant, and upon uncontested facts, except as possibly different minds might reach different conclusions upon undisputed evidence. This domain of controversy is a very narrow one.

The material facts established by the evidence we claim to be as follows:

For many years prior to February 24th, 1884, King had been a resident of Minneapolis, Minn. In October, 1883, there was organized under the laws of Illinois, with its principal place of business at Pullman, a corporation known as the "Pullman Iron & Steel Company," with an authorized capital of $500,000, divided into 5,000 shares of $100 each. The business provided for by the Articles of Incorporation was, the manufacture of iron and steel into any structural forms, but the particular business specially contemplated was, the manufacture of a railroad spike called the "Bayonet Spike." To this end, at the inception of the organization, the plaintiff, Doane, together with one Frank B. Felt, James P. Perkins and James H. Smith (private secretary for Geo. M. Pullman), subscribed for and took the entire capital stock of the company (1,250 shares, or $125,000, each), transferring and assigning to the corporation in full payment therefor a patent issued by the United States for the "Bayonet Spike" aforesaid.

The patent was originally issued to Perkins. Afterwards, a quarter interest each was acquired by Doane, Felt, and Pullman. Later, Pullman assigned his quarter interest to his private secretary, Smith. Then the whole was assigned to the corporation, and the entire stock issued in equal amounts to Doane, Perkins, Felt, and Smith. Up to this time the utility and practical value of the patent was wholly conjectural and experimental. Whether Pullman, Doane, and Felt, paid Perkins anything for their respective interests therein, does not appear. The sole assets of this corporation, with $500,000 capital, then consisted of this patent, and the four incorporators owned all the stock.

During its first year's existence, October, 1883, to October, 1884, Felt was secretary and treasurer of the corporation, and Doane, Felt, and Perkins, were members and a majority of the board of directors, in full control of its affairs. The original certificates of stock were issued to the four incorporators about the time of the organization of the company.

At some time prior to April 12th, 1884, and prior to the giving of King's first note, in pursuance of a mutual agreement among the four stockholders, each made a so-called donation of one-half of his stock to the company, to raise funds for building a plant, and for working capital. (Original page 75.) The resolution of the board of directors, accepting such donation April 12th, 1884, recites that the proceeds "realized shall be paid into the treasury of said company to be used for its working capital,

and shall be credited to the said donors as a contribution for said purpose." (Original pages 95 and 96.) On April 12th, each of the four incorporators surrendered his original certificate for 1,250 shares of stock, and received a new one for 625 shares, and the balance, except such as was issued to intermediate purchasers, and except 750 shares, which were taken and paid for in equal amounts (375 shares each) by Pullman and Doane, at 62⅔ cents on the dollar, was held by Felt as trustee for the company.

From a time anterior to the completed organization of the company, down to the date of the actual execution of the note, dated January 5th, 1884, (but actually signed February 24th, 1884) Felt had been negotiating with King (an old acquaintance and friend), with a view to his becoming a subscriber to the stock of the company. No contract to actually take stock was ever consummated, until the transaction of February 24th or 25th, 1884 (Original pages 48 and 54, and correspondence, original pages 55 to 67). King had no knowledge of the affairs of the company, except such as he derived from Felt, upon whose statements he implicitly relied. The correspondence between them began November 7th, 1883, after the organization of the company, and when Felt was its duly elected and acting secretary and treasurer. In addition, frequent oral representations were made.

The negotiations clearly contemplated a subscription for stock directly to the company, and not a purchase of stock from any other person. During the negotiations, Felt, with knowledge of their falsity, made material false and fraudulent representations to King, which were relied upon by him, and which induced him to execute his note for stock to be issued to him by the company. These representations related to the actual business of the company then being transacted, and to the capital and resources of the company.

December 20th, 1883, by letter, Exhibit "C" (Original page 56), he stated, "I closed contract for 12,000 kegs spikes last night at a profit of $1.50 per keg,"—a total profit of $18,000. This statement is shown by his own unwilling testimony, when confronted by his books, to be wholly false, as all contracts taken down to March 1st, 1884, amounted to less than 3,000 kegs, (Original pages 90 and 92) and no contract as early as December 20th, 1883, for any spikes whatever, is enumerated by him.

Again, on January 21st, 1884 (Exhibit "E", original page 58), he wrote, "Our spike has been adopted by many of the leading roads, and orders coming in too fast for us. Now figuring on the eastern factory;" and February 11th, 1884 (Exhibit "H", original page 62), "We have booked all the orders at full prices we dare

to;" and February 22nd, 1884 (Exhibit "J", original page 64), "Have made arrangements to start another manufactory at Pittsburgh. We are having great demand for our spikes. Think we could fill two more factories with work if we had them." There was evidence in the case—less direct than in the first instance cited—fairly warranting the conclusion of the falsity of all of these statements.

Concerning the actual paid up capital of the corporation, Felt represented, (Exhibits "E" and "H", original pages 57-58 and 61-62, and original pages 49 and 50) that $75,000 of the stock had been given to Perkins for the patent; that $75,000 each had been taken by Pullman and Doane at 66⅔ cents; that $100,000 had been taken by Pullman and Doane at par; and that all of the stock, except the $10,000 which King was to have, had been taken and fully paid for, and all at par, except the two blocks of $75,000 each to Pullman and Doane at 66⅔ cents, and a like amount ($75,000), which he had undertaken to place, and had placed at the same rate. The facts, as disclosed by the testimony of Felt himself, were, that the whole stock had been originally issued as full paid stock in consideration of the assignment of the patent to the company; that one-half of it had then been placed in Felt's hands, as trustee, to be sold—1,500 shares at 66⅔ cents on the dollar, and the balance at par (Original page 81); that Doane and Pullman had each taken, or agreed to take, 375 shares, or $37,500 each, at 66⅔ cents on the dollar; that they had never taken or agreed to take $100,000, or any other amount in excess of the $37,500 each at par, or at all (Original page 87), and that the only other stock which had been sold was some portion of a block of $75,000 (what portion does not appear), which Felt had agreed with the other stockholders to find market for.

The condition of the company, as represented, and as actually existing, is contrasted in the following schedules:

AS REPRESENTED.

Proceeds of $75,000 stock each to Pullman and Doane at 66⅔	$100,000
Proceeds of $100,000, to Pullman and Doane at par	100,000
Proceeds of $75,000, sold by Felt, including that to King, at 66⅔	50,000
Proceeds of bal. of capital stock at par, less the $75,000 to Perkins for patent, being $100,000	100,000
Cash capital	$350,000

and the patent.

ACTUAL.

Proceeds $37,500 stock each to Pullman and Doane at 66⅔	$50,000
Proceeds of the $75,000 sold by Felt (if all sold) at 66⅔	50,000
Total cash	$100,000
And the patent representing	250,000
Unsold treasury stock	100,000

July 1st, 1884, the plant acquired by the $100,000 cash subscriptions was mortgaged for $100,000. (Original pages 89 and 90.

February 18th, 1884, King proposed to give his note for $6,666.00, due October 1st. (Exhibit J., original page 63). Felt wrote February 22nd that he had made arrangements to use the proposed paper, (Exhibit J., original page 64), and the same was enclosed in letter of King to Felt, dated February 25th, (Exhibit L., original page 65), and Felt's official receipt as treasurer was returned to King, (Exhibit M., original page 66), in which it was specified that full paid stock would be issued to King for $10,000 when the note was paid.

April 19th, 1884, Felt again wrote, enclosing a certificate of stock, and stating that Doane had advanced the money on the note, and desired to hold King's stock as collateral. (Exhibit N., original page 67). King, accordingly, endorsed the certificate in blank, and returned it to be so held by Doane. (Exhibit P., original page 69).

King's note was payable to the Pullman Iron & Steel Company, (Exhibit K., original page 65), was receipted for by Felt as treasurer, and the transaction was with the company, and not with Felt individually. (Original page 78). The company, however, did not issue any of its stock to him, nor did he receive any of the stock held in trust for the company. Neither did the company in any way receive the benefit of the note. On the other hand, immediately upon its receipt by Felt, he endorsed it as treasurer, and then individually, (original page 65), and handed it over to Doane as collateral to his own note discounted by Doane. (Original page 78).

There is no direct statement, or necessary inference, that the money obtained by Felt from Doane in this transaction in any way went to the company. If it did, it was upon Felt's personal account. The company never received anything from Doane for the note. (Original pages 78, latter part of 80 and 81). Felt's loan from Doane was repaid to him. (Original page 79). Before

such payment, Doane proposed to Felt to keep the collateral note of King as his own, and transfer 100 shares of his own stock issued to him for the patent to King, and this was done without King's knowledge. (Original 78 to 81 inclusive, and original page 52).

At the maturity of the first note, King was unable to meet it. He was still in entire ignorance, both of the fraud which had been perpetrated upon him in obtaining it, and upon him and the company in the transfer thereof to Doane, and he believed Doane to be the *bona fide* holder and owner thereof. (Original page 53). Additional security was demanded of King, and he gave the note sued on, secured by the $10,000 stock in the Pullman Company and $8,500 stock in the Brush Electric Company. (Original page 53).

(The counter claim in the answer for the conversion of the last mentioned stock becomes immaterial, because of the surrender of this stock by Doane after the answer was filed).

The stock in the Pullman Company has always remained in Doane's possession, indorsed in blank, and the answer renounces all claim thereto.

SPECIFICATION OF ERRORS.

Accompanying the return to the Writ of Error, as required by Sec. 997, Revised Statutes, is an assignment of errors and prayer for reversal. (T. of R., p. 2). The sole assignment there presented and now relied upon is, that the court erred in directing the jury to return a verdict for the plaintiff for the amount of the note sued upon, with interest.

BRIEF AND ARGUMENT.

I.

The note sued on, being a mere renewal of the former one, is subject to the same defences as the original note. 1st. Daniel on Negotiable Instruments, Sections 177, 179 and 205. The legal proposition is elementary.

The evidence is undisputed that, at the date of the renewal, King was entirely ignorant of the fraud, and believed that the original note had been discounted by Doane in the ordinary course of business. (Original page 52).

II.

The evidence, as pointed out in the preceding statement of facts, not only tended to show, but very clearly established that

the original note was procured by gross fraud and wilful false representations, which were believed and acted upon by King. So clear was the evidence, that the court, in explaining to the jury the reasons for the peremptory direction given them, said, (original page 97), "I have no doubt in this case the defendant has been atrociously swindled;" and again, in passing upon a motion for a new trial (original page 38), "The only question is, was plaintiff a *bona fide* purchaser before maturity of the note, of which the one in suit was a renewal? The testimony discloses the fact that the original note was obtained by false representations."

Such being the unquestionable fact, it is clear that a *prima facie* defense was shown, and that the burden was cast upon the plaintiff to show himself to be a *bona fide* purchaser of the note, before maturity, in the ordinary course of business, and for a valuable consideration.

This general proposition is now almost universally established, and admits of no debate in this court.

Smith vs. *Sac County*, 11 *Wal.*, 148.
Commissioners, etc., vs. *Clark*, 94 *U. S.*, 285.
Collins vs. *Gilbert*, 94 *U. S.*, 761.
Stewart vs. *Lansing*, 104 *U. S.*, 509-510.

The plaintiff offered no evidence whatever, and gave no testimony concerning the transaction by which he acquired the note. The verdict was peremptorily directed in apparent disregard of the legal presumption arising from proof of fraud in the inception of the note, since the court in its explanatory remarks used this language (Original pages 99 and 100), "The law is well settled that one, who is in possession of a promissory note endorsed before it is due, is presumed to be the *bona fide* holder of the note. You have got to show he has been guilty of wrong, or the law says he is a *bona fide* holder, and nothing can be taken against him."

The peremptory instruction was clearly erroneous, unless the evidence adduced by the defendant, in addition to the proof of fraud, further clearly and unmistakably established that the plaintiff was a *bona fide* holder for value, within the meaning of the law.

III.

This brings us, necessarily, to a consideration of what the defendant's evidence *does* and *does not* establish concerning the transaction by which plaintiff acquired the note.

To sustain the judgment it is essential that it should unequivocally appear from the evidence introduced by the defendant that the plaintiff was a *bona fide* purchaser of the note for value, before maturity, and in the ordinary course of business. It is conceded, however, that under the rule established by Murray vs. Lardner, 2 Wal., 110, and other cases, proof of a purchase for value would raise a presumption of *bona fides*.

The contention of plaintiff in error is, first, that the plaintiff was not a purchaser of the note at all; second, that it does not appear that he gave value for it; third, that he took it out of the ordinary course of business, and under such circumstances as overcome the presumption of *bona fides*, if he was a purchaser for value.

THE PLAINTIFF WAS NOT A PURCHASER OF THE NOTE.

Upon the execution and delivery of the note by King, the contract between him and the company was left executory so far as the company was concerned. The receipt, executed by Felt as treasurer, and accepted by King (Exhibit "M", original page 66), contained the terms of an express contract, binding upon both parties, the effect of which was, that King should be entitled to receive his stock when, and only when, the note was paid. King did not *ipso facto* become entitled to any stock, or to assert or exercise any rights as a stockholder. His rights were conditional and in abeyance. Unless the terms of this contract should be waived by the company, or modified by mutual agreement, King could not assert any voice or interest in the concerns of the corporation prior to the payment of the note. Doane knew of this condition of affairs, for the proposition emanated from him to "take the note and assign to Thos. S. King one hundred shares of his stock." (Last lines of original page 78.)

Now note the steps of this so-called purchase. All the evidence pertaining thereto is embraced in Felt's deposition. Interrogatories 25 to 32, inclusive. (Original pages 78 et seq). Doane first discounted Felt's individual note, and took the King note, indorsed first by Felt as treasurer, and then by Felt individually, as collateral security. This was "soon after the receipt of this note," Felt's note to Doane being dated March 8th, 1884. (Original page 79).

It is unnecessary to inquire what rights are acquired by a director in a corporation, who knowingly accepts a note belonging to the corporation as collateral to the individual obligation of the treasurer thereof. Whatever the rights so acquired, they were certainly extinguished by the payment of the principal debt, which

was paid "about September 1st, 1884." That the principal debt *was* a purely individual obligation of Felt's, admits of no question.

The inference drawn by the court below in disposing of the motion for a new trial, that the money, which Felt procured from Doane, was handed over to the company, might be conceded without prejudice to our contention, but it would necessarily carry with it the further inference, that Felt received, or was entitled to receive, stock in the company therefor. Felt individually repaid the money borrowed from Doane, and he is either individually out of pocket the amount of that loan, or he received an equivalent from the company therefor. He expressly states in his testimony that he, having provided the amount of money necessary to cover this subscription, preferred to keep the stock himself, and let Doane sell some of his. (Original pages 78 and 79).

Again, the testimony of Felt is clear and direct to the effect, that the company received nothing from Doane for the King note. (Original pages 80 and 81).

"Int. 31. Now, has the Pullman Iron & Steel Company ever received anything from Mr. Doane, and if so, what, in consideration of the King note which was transferred to him in the manner you have described?

"A. Indirectly it possibly has, but directly I think not.

"Int. 32. If there was anything further in the transaction by which Doane received the note, or any consideration moving from him to the Pullman Iron & Steel Company, please state it.

"A. No; there is no consideration that the company received."

Doane simply transferred to King 100 of the 625 shares, which he had received for his interest in the patent, and thereby assumed to acquire an absolute title to the note, which he already held as collateral to the individual obligation of the treasurer, and now asserts that title and his rights thereunder as being superior to the rights of the original holder, *i.e.*, not subject to the same defences.

In determining the motion for a new trial, the court below referred to the positive testimony of Felt that the company received no consideration from Doane for the King note, but suggested that the facts nevertheless appeared to be otherwise. If the testimony is fairly susceptible of two interpretations, we need no more than advert to the settled rule that the case should have been left to the jury, but our contention is, that the view of the court below is wholly against the evidence.

The way in which, as Felt says, the company may have indi-

rectly received some consideration for the note, and the *only* way, was that Felt by using it as collateral may have been enabled to raise funds with which he took, for himself, or for other persons to whom he had sold or agreed to sell stock, some portion of the $75,000, which, as between himself and the three other stockholders, it was expressly or tacitly understood he should place. But what if this was accomplished? The fact remains that Doane was repaid by Felt; his rights, if he had any as the holder of the collateral, were extinguished; and the company gave to Felt, or some of his vendees other than King, some of its treasury stock in return for the money so received.

For the purpose of the argument, (and for that only), let it be granted that "defendant received his 100 shares of fully paid stock, as he contracted for, the company received the money, (for which, however, Felt or his vendees received stock), and the plaintiff parted with his 100 shares." (Opinion on motion for new trial, last part original page 41). It by no means follows that our contention is one relating to "form," rather than substance. On the other hand, the facts above recited are remote from the matter of most vital and substantial right in this case.

The present question is not, whether Doane's stock, duly transferred, conferred upon King all the rights which he would have had through a direct issue of stock by the company, but whether Doane's stock seals King's lips against the assertion of the fraud practiced upon him, when the company's stock would not. Again, the question is not, whether the stock transferred to King puts him in substantially the same position he would have occupied, if Felt, after purchasing stock with the money loaned him by Doane, had transferred the stock thus purchased directly to King, and himself appropriated the King note. The real question is, is he in a worse position?

As against Felt or the company, King would unquestionably have a perfect defence. For present purposes, let Doane's stock be considered as the equivalent of the company's. The trouble is not, in the view we are now considering, that Doane's stock will not serve the same purpose as the company's, or Felt's, but that he cannot be compelled to take Doane's, or the company's, or Felt's, except by the enforcement of a contract vitiated by a gross fraud. Felt could not enforce it. The company could not enforce it. Doane cannot enforce it, unless through a *purchase* of the note he has acquired a position superior to either.

It is fallacious, however, to say that King received his stock "*as he contracted for.*" What he contracted for was the representative of value—his proportionate interest in a company with

$350,000 of paid up cash capital. What he got was the representative of lies and fraud.

The company received the money? Yes; but from Felt, and as Felt's money, and not from Doane, or as Doane's money, and for the money the company gave Felt its stock, and Doane's loan to Felt was repaid.

But "the plaintiff parted with his 100 shares"? Yes; but not to the company as value given to the payee for King's note, but directly to King, as a consideration furnished by stealth, in performance of the letter of an executory contract, into which the maker of the note had been entrapped by fraud. Having undertaken, without King's assent, to become a party to, and to avail himself of the benefits of an executory contract between King and a third party, he certainly acquires no higher rights or superior equities than belonged to such third party. If a stranger to a contract, by secret and substituted performance, can acquire any rights whatever, such rights must be in subordination to any inherent invalidity in the contract, whether known or not.

It certainly will not be claimed that Doane purchased the note by a sale of his stock to the company. Such a theory would be wholly unsupported by any evidence, and in conflict with the direct testimony of Felt (Original pages 79 and 80).

It would also be in conflict with a well settled legal principle, that a corporation cannot purchase its own stock, except under circumstances not here existing.

1st Morawetz on Corporations, Sec. 112.
German Sav. Bank vs. *Walfkuhler*, 19 *Kans.*, 60.
Abeler vs. *Cochrane*, 22 *Kans.*, 405.

As a means of meeting business exigencies, and for a limited class of legitimate purposes, corporations have been sometimes held to have power to purchase their own stock, but never for the simple purpose of enabling a stockholder and director to absorb the assets of the company, and withdraw its capital for his own benefit. Such a transaction necessarily amounts to a fraud upon every other stockholder.

At the time of the transaction in question, Felt, as secretary and treasurer of the company, held as trustee, to be sold for the benefit of the company, at least $100,000 of the company's stock. His letters to King were filled with urgency for funds to meet the company's contracts. Under this state of things, the company had no power to devote its assets to the acquisition of its own stock, simply to accommodate a director who had more stock than he wanted.

Finally, if Doane had purchased the note from the company by a sale of his stock to the company, King would not have been called upon to give back the stock to Doane as collateral security for the note. This latter transaction, however, was a perfectly reasonable and consistent one, if, as was represented to King, Doane had advanced the money to the company, thus enabling the company to issue its own stock to King in advance of the actual payment of the note, which had been made an express condition precedent by the terms of the contract.

IV.

IT DOES NOT APPEAR THAT DOANE PARTED WITH VALUE.

The only thing that he parted with at all (having received back his money from Felt) was $10,000 in *stock*. This stock was a part of the 625 shares, which he received for his patent, or his interest therein. The whole capital stock of half a million dollars was first issued in consideration of a patent, which had not yet passed beyond the stage of mere experiment. The motive for so doing is explained by the witness Felt (original page 74) in these words, "The patent was considered of great value, and was issued in payment of the full capital *stock, thus making the stock full paid and non-assessable.*" The evidence, in so far as it touches the subject at all, tends to show that the patent was *in fact* of no value, though the parties to the transaction may then, as the witness states, have *believed* it to be valuable.

Whether they so believed or not, the transfer of the patent, as yet of no *established* utility and *demonstrated* value, in consideration of the issue of the whole capital stock of half a million dollars, and for the *purpose* of making the stock "full paid and non-assessable," and in order that they might deal with it as such, was a fraud upon the public, and upon all persons dealing with the company, or its stockholders, upon the faith of its capital being paid up. As between the parties to the arrangement, it may have been valid, but not as to creditors, or any persons having a right to treat the capital as a trust fund.

Scovill vs. *Thayer*, 105 *U. S.*, 153.
Sawyer vs. *Hoag, Assignee*, 17 *Wall.*, 610.
Upton, Assignee, vs. *Tribilcock*, 91 *U. S.*, 47.

The burden was upon Doane to show that he purchased the note for value. He offered no testimony whatever. If the evidence showed a transaction between Doane and the company,

constituting, as understood by them, a purchase of the note, (which it does not), would the surrender of stock thus acquired, without any affirmative proof of the value of the patent, or of the stock, constitute a giving of value within the meaning of the rule?

Some authorities have held there must be proof of the giving of "full value," others of "fair value," and still others that the *amount* of value given is only material as having a bearing upon the question of *mala fides*.

Assuming the latter to be the rule in this court, it nevertheless must be made to appear that *some* value was given. There is no evidence that the stock was of any value whatever. While this court does not accept the rule which prevails to a very great extent in the state courts, that the purchaser of negotiable paper, fraudulent in its inception, can recover from the maker only the amount paid by him, or some *bona fide* prior holder thereof, (*Cromwell* vs. *Sac County*, 96 *U.S.*, 59), that rule may nevertheless be adverted to as indicating the scope of the other rule held by all courts, that the holder must affirmatively show that he gave value.

V.

THE TRANSACTION, BY WHICH DOANE ACQUIRED THE PAPER, WAS NOT IN THE ORDINARY COURSE OF BUSINESS, AND WAS ACCOMPANIED BY CIRCUMSTANCES INCONSISTENT WITH GOOD FAITH.

Without further dwelling on the facts already discussed, that he first took the note as collateral to Felt's individual note, and then undertook to dispose of his own stock (which the company could not legally acquire in exchange for the note), we now call attention to the further fact, that the transfer of the note to Doane, and of Doane's stock to King, *per se*, involved a *gross fraud* as against King. To illustrate the nature of the fraud, suppose the transaction to have been upon a larger scale. In its essential elements it would have been the same, if King had been negotiating to acquire directly from the company one-half of its entire stock, or $250,000 in amount. The difference to him, whether the amount which he should pay should go into the treasury of the company, or into the pockets of one or more of the stockholders, is both apparent and striking. In the one case, the capital and assets of the company would be augmented by the precise amount which he might pay; in the other it would not be increased by a single penny, but in both cases his stock

would represent simply his proportional interest in such capital and assets.

We conceded, in a former portion of the argument, for the purpose of the argument only, that King got what he bargained for, when he got stock, but looking at stock in its true light—simply as representing a fractional interest in the whole property of the company—it is evident he did not get what he bargained for. It was a matter of weighty importance to him, and to every subscriber for stock, whether he got his stock from the company, or from an "inside" stockholder to whom it had already been issued as "fully paid and non-assessable." He has been made the victim, not of one, but of two atrocious swindles. First, when Felt lied to him as to what the capital and the assets of the company really were, and obtained his note; and second, when Doane and Felt conspired to foist upon him Doane's stock, thus diverting from the treasury to Doane's pockets the proceeds of that subscription.

The very transaction of the acquisition of the note being tainted with a fraud against King, the holder cannot be entitled to the protection accorded to bona fide purchasers of negotiable paper.

The second fraud alone, if the first had never been perpetrated, would of itself constitute a complete defence to the note. Take the case supposed of a subscription for one-half of the capital stock of the company. Doane knows that a note has been executed to the company, and that King expects to receive from the company an issue of one-half of its capital stock, and that his note, or its proceeds if discounted, will go into the treasury of the company. He enters into a secret arrangement of which King knows nothing, by which he transfers to King his own stock, and diverts the note and its proceeds from the treasury of the company to his own pocket. King, as the supposed owner of one-half of the stock in the company, which means practically a one-half interest in the assets of that company, is defrauded just in proportion as the assets are diminished.

Can Doane upon this state of facts maintain an action against King upon the note? Clearly not, because by surreptitiously substituting his own stock for that of the company he is attempting to enforce a contract against King, which he never made, and which in its substance and effect and pecuniary results to King is wholly different from the contract which he did make.

In this connection, it is to be remembered that $100,000 in stock held by Felt in trust under the donation to the company was never sold at all, as shown by the testimony of Felt taken

nearly three years after Doane's stock was transferred to King. (Original pages 81 and 82).

It would be strange, indeed, if the second fraud could so neutralize the first as to deprive King of the perfect defence, which he undoubtedly had as against the corporation named as payee in the note.

We insist then, that the so-called transfer was in and of itself a fraud upon the maker of the note, and hence not *bona fide*.

"Fraud cuts down everything, and although the holder may pay value, yet if his acquisition of the paper be in any respect fraudulent—as where it is made or transferred to give him preference over other parties to a compromise of creditors—he cannot claim the position of a *bona fide* holder."

1st. Daniel on Negotiable Instruments, Sec. 770.

In the case of Lawson et al, vs. Weston, 4 Esp., 56, following the still earlier decision of Lord Mansfield in Miller vs. Race, 1st. Burrow, 452, it was said by Lord Kenyon: "*If there was any fraud in the transaction*, or if a *bona fide* consideration had not been paid for the bill by the plaintiffs, to be sure they could not recover."

In the later case of Goodman vs. Harvey, 4 Ad. & El., 870, re-establishing the rule of Lawson vs. Weston, it is said: "Where the bill has passed to the plaintiff without any proof of *bad faith*, there is no objection to his title."

The bad faith, which vitiates the rights of a holder of negotiable paper, may consist in a transfer, which *per se* to the knowledge of the transferee operates as a fraud upon the rights of any person, as well as in actual notice of a fraud perpetrated upon the maker.

Swift vs. *Smith*, 102 *U.S.*, 442.

A transfer, tainted with fraud or bad faith in whatever form, is not panoplied with the protection which the law in the interests of commerce wisely accords to the *bona fide* holder of commercial paper. Neither do we conceive it possible that this transaction, irrespective of the taint of fraud, can be held to be in the ordinary course of business, which means "according to the usages and customs of commercial transactions."

1st. Daniel on Negotiable Instruments, Sec. 780.
Kellogg vs. *Curtis*, 69 *Me.*, 212.

The possession of this note, and the indorsement of the same in the name of Pullman Iron & Steel Company, by Felt as treasurer, were both procured through the transaction of the personal loan to Felt, for which this note was taken as collateral. This

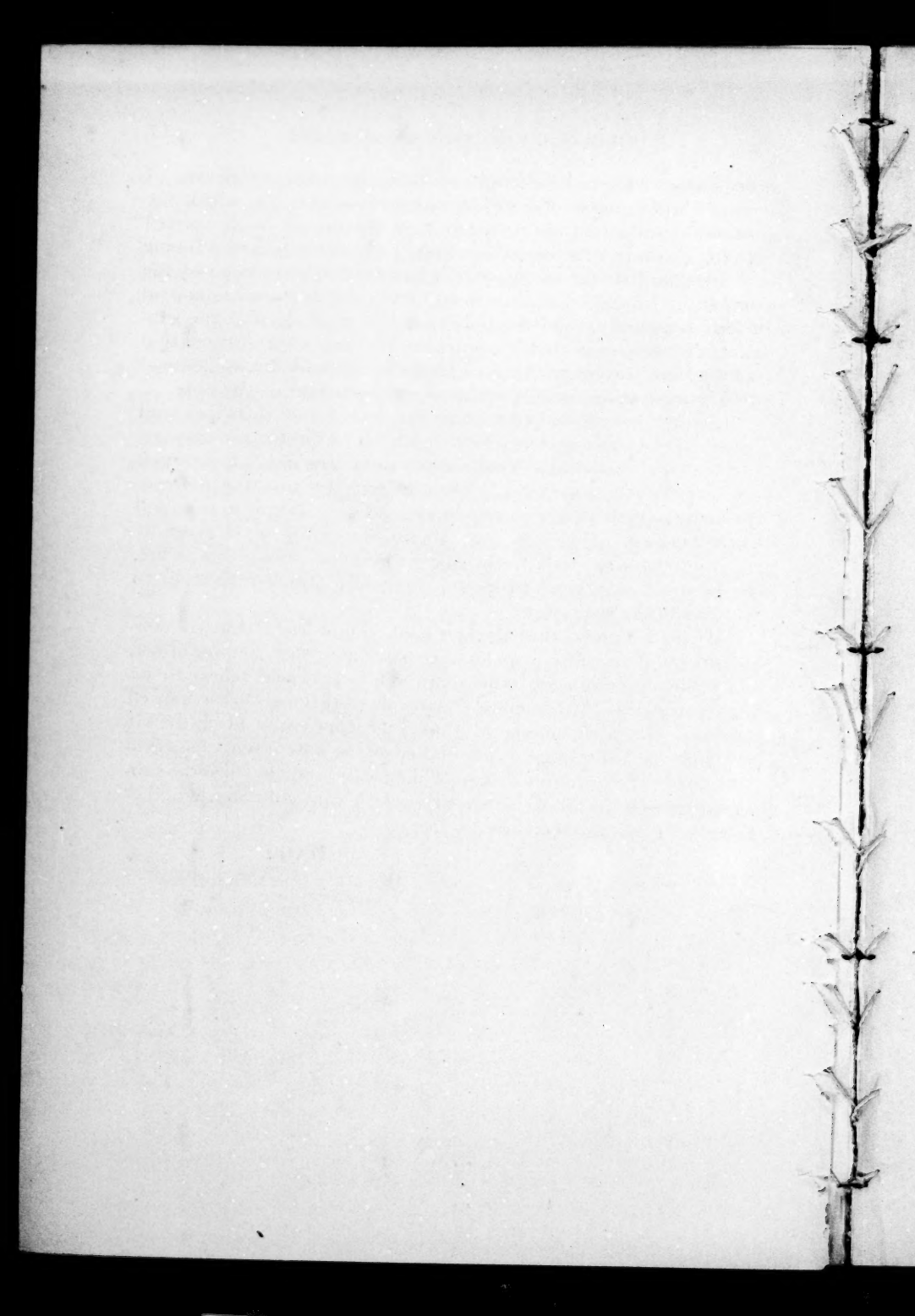
transaction was certainly not one in the ordinary course of commercial business. The subsequent transaction, by which the possession and title thus obtained were sought to be converted into an absolute title, was also purely personal as between Doane and Felt, and so far as appears without the knowledge of the company. Doane's proposition to Felt that he personally, instead of Felt personally, should supply the stock to King, and the subsequent action upon that proposition, eliminates the corporation as fully from the transaction, as though Felt individually, instead of the corporation, had been the payee and owner of the note.

It must be remembered that the relation of principal and agent did not exist between Felt and King. The former was not authorized to negotiate King's note upon the market for stock wherever he might secure it. The note was payable to the corporation, of which Felt was treasurer. Of this, Doane was bound to take notice. He knew that the consideration to be given by the company was stock, and that it had not been given as yet, else he could not have proposed to himself transfer his stock to King and take the note.

We do not claim that the fact that Doane knew that the consideration of the note was an executory contract to issue stock, made the note non-negotiable as to him. It is held otherwise by high authority. We do claim, however, that when Doane himself assumed the performance of that executory contract, and that without the knowledge of the maker of the note, the transaction was not in the ordinary course of business, and that Doane subjected himself to all the inherent vices of that contract, whether known, or unknown to him.

F. B. HART,
Atty. for Plff. in Error.

M. P. BREWER,
Of Counsel.



Office Supreme Court U. S.
FILED.
NOV 3 1890
JAMES H. McKENNEY,
CLERK.

United States Supreme Court

OCTOBER TERM, A. D., 1890.

No. 77.

THOMAS S. KING,

Plaintiff in Error.

vs.

JOHN W. DOANE.

BRIEF OF DEFENDANT IN ERROR.

W. E. HALE,
Attorney for Defendant in Error,
MINNEAPOLIS, MINN.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A.D. 1890.

NO. 77.

THOMAS S. KING, PLAINTIFF IN ERROR,

vs.

JOHN W. DOANE.

BRIEF OF DEFENDANT IN ERROR.

I.

The real question in this case is, was the plaintiff a *bona fide* purchaser of the promissory note of which the one now in suit is a renewal. Being in possession of the note the law presumes that he purchased it in good faith, before maturity, for a good consideration, and without notice of any facts affecting its legality. This presumption continues until it is overcome by proof, showing that the note was *originally* infected with fraud or illegality so as to destroy the title as between the original parties. The plaintiff would then have no title to the note or right to recover until he had shown that he or some other holder had given *value for the note, before maturity*. Having shown this, the original presumption that the plaintiff was a *bona fide* holder would be restored, and the plaintiff would be entitled to recover, unless the defendant should show notice to the plaintiff of the facts upon which he relied to destroy the legality of the note.

Murray vs. *Lardner*, 2 *Wall*, 110.

"Suspicion of defect of title or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man or gross negligence on the part of the taker, at the time of the transfer, will not defeat his title. That result can be produced only by bad faith on his part." 2 *Wall*, 121.

In *Kellogg* vs. *Curtis*, 69 *Me.*, 212, the court, in speaking of this matter, says, "The inquiry naturally occurs, what must the

indorsee show in order to sustain the burden cast upon him where the note originated in fraud? He makes out a *prima facie* case by proving that the note was indorsed to him for value, before maturity. Nothing else appearing, a presumption arises that he purchased the note in good faith without notice of the fraud. This presumption exists, because it is not likely that he would give full value for the note which he knew or believed to be fraudulent, taking the hazard attending it upon himself, and because it would be difficult to prove his good faith in any better way than that he gave value for it."

And the court further says on the same page (275), "The purchase by the indorsee must be 'in the usual course of business.' These words are usually defined to mean, 'according to usages and customs of commercial transactions.' If the plaintiff purchased the note before maturity for value, that would be such a transaction."

The defendant's counsel, understanding well the law governing the rights of the parties in this action, undertook to prove, and for the purpose of disposing of the case as it now stands we must concede that they did prove, that the note was procured by Felt from the defendant by means of fraudulent representations. This shifted the burden of proof to the plaintiff and he was bound to prove, unless it appeared from the defendant's testimony, that he purchased the note before maturity and paid a valuable consideration. *This proof the defendant did supply without showing or attempting to show that the plaintiff had any notice of the fraud at any time prior to the commencement of this action.*

On the question, did the plaintiff purchase the note before maturity, for a valuable consideration, there was nothing to submit to the jury; the evidence was clear and undisputed that he did; and the court was right in directing a verdict for the plaintiff and in denying the motion for a new trial. "If the court is satisfied that, conceding all the inferences which the jury could justifiably draw from the testimony, the evidence was not sufficient to warrant a particular verdict, the jury might be so instructed." *Stewart* vs. *Lansing*, 104 *U. S.* 512. Had the case gone to the jury and a verdict been found for the defendant, the court must necessarily have set it aside, because no such inference could "justifiably" have been drawn.

But, it is claimed by counsel for the defendant (see brief, on page 9): 1st. That the plaintiff was not a purchaser of the note at all. 2d. That it does not appear that he gave value for it. 3d. That he took it out of the ordinary course of business and under such circumstances as overcome the presumption of *bona*

fides if he was a purchaser for value. These are but sub-divisions of the only question in the case, was the plaintiff a *bona fide* purchaser; and as a discussion of one will necessarily involve the others to some extent, and thus result in much repetition, we prefer to treat them as one and answer the question.

II.

WAS THE PLAINTIFF A BONA FIDE PURCHASER OF THE NOTE OF WHICH THE ONE IN SUIT IS A RENEWAL?

This question, as we have already shown, should be answered in the affirmative, if it appears that the plaintiff paid value for the note and took it before maturity, *unless* it also appears that he took it under such circumstances as destroy the presumption of *bona fides* arising from the purchase, before maturity, for value. That he purchased it *before* maturity, if he purchased it at all, there is no dispute. The note was dated January 5th, 1884, and was payable October 1st, 1884. Doane had 100 shares of his stock transferred to King, April 19th, 1884, the time when he made the arrangement with Felt to take the note. (Paper book, page 35.)

Did the plaintiff then purchase the note and pay a valuable consideration for it? Let us see. The four stockholders in the first place owned all the stock for which they had transferred to the company the patent. The company then had the patent, but no stock and no money. By subsequent agreement, and before the execution of the King note, the four stockholders, in order to raise money for the company to commence doing business, agreed among themselves to donate to the company, for the purpose of being sold at 66⅔ cents on the dollar, 1,500 shares of their stock, making 375 shares each. Doane and Smith, being men of means, and considering the stock worth at least and perhaps more than 66⅔ cents on the dollar, retained their 375 shares and paid into the treasury in lieu thereof $25,000 each. It was also understood that Felt and the other stockholder should sell their 375 shares. In pursuance of this, Felt commenced negotiating with King for the sale to him of 100 shares of stock. King agreed to take it at the price paid by Doane and Smith, but being unable to raise the money to pay for it, finally, February 25th, 1884, sent his note for the amount, dated January 5th, 1884.

It would seem that King had agreed to take the stock as early as November 10th, 1883. (See his letter of this date, paper book, page 24). King understood that this note would probably

be negotiated and sold in order to raise money to go into the treasury. *Doane knew nothing about the contract between Felt and King, and knew nothing about their correspondence, or the representations made by Felt to King.* He had a right to suppose, and undoubtedly did suppose, that Felt was selling King 100 shares of the 375 shares which Felt was, by agreement, to sell and dispose of. The note was not cash, and could not be used as such by the company, and the company wanted cash. It was a part of the agreement that Felt should dispose of these shares for cash. So Doane, in order to assist Felt in complying with his agreement, and that the company might have the money for the note, proposed to loan and did loan to Felt, for the purpose and with the understanding that it would go into the treasury to pay for King's stock, upon his individual note, dated March 8th, 1884, taking King's note as collateral security, money to the amount of this note.

There is no other reasonable conclusion to come to than that this money paid by Doane, for the purpose and intention of being paid into the treasury, was in *fact* so paid. Although this money was raised by Felt as an individual, he was the treasurer at the time, and paying it to him was paying it into the treasury. So the company received it, and, so far as the evidence shows, always retained it.

The matter then stood thus: King's note had practically been sold, and the money realized from the sale turned into the company. *Felt owned the note.* He had, by his own note, paid the company for the King note. The company could not hold both the note and the money. It had, in a sense, sold the note to Felt, for the money had been paid into the treasury. King's "*executory contract*" was then at an end, and although he had not yet received his stock, he was entitled to it, and was, from that time on, a stockholder, and entitled to vote and participate in the affairs of the company.

A short time after this, Doane asked Felt whether he wished to retain his stock, or issue 100 shares of it to King, and Felt replied that he wished to keep his stock, that he did not care to dispose of any of his stock. It was then agreed that Doane should issue to King 100 shares of his stock, for which he would take the King note. Accordingly, he surrendered his block of stock, 625 shares, and the company issued to King, in consideration of his note, or the proceeds thereof, 100 shares of stock, and the balance, 525 shares, was re-issued to Doane. Felt afterwards, September 1st, 1884, paid his note to Doane.

The matter then stood thus: King had paid for and received

100 shares of stock. Felt, preferring to keep all of the 375 shares, sold the King note to Doane, and, in consideration thereof, Doane transferred to King, through the company, 100 shares of his stock. The company did not, in fact, issue any of its shares, but it still had the money paid in for King by Felt. King had received his stock, and the *company's obligation to him was discharged.* But, by this arrangement, Felt was entitled to 100 shares of the company's stock. If he should keep the 375 shares, he would already have paid for 100 shares. If he did not keep them, but they continued to belong to the company, then the company would have had the money paid in by Felt, and, in addition, the 100 shares. Whether Felt afterwards received his shares does not appear, and it is wholly immaterial to this case. If he did not, King and the other stockholders are just that much better off.

Can it be said that there was no consideration paid for this note by Doane, or that there was any *fraud* in this transaction, or that it was not in the "usual course of business?" Counsel calls this the "second fraud"; who was defrauded and how? It was not King or any of the stockholders, because they all received the benefit of the King note, just as much so as though Doane had not figured in the transaction, and King had sent his note to the company and it had sold it and used the proceeds and had issued to him directly some of its own stock. Did not Doane pay a good consideration for the note? He *parted* with 100 shares of his stock; the same kind of stock which he and Smith had previously paid 66⅔ cents on the dollar for, just what King agreed to pay for his, amounting in all for both of them to $50,000. It was the price the company had fixed for the sale of the stock donated to it. It was the same price others had at or about that time paid for it. It was what they all considered it worth. It was its market value. The spike had for some time prior to the organization of the company been experimented with and had proved to be valuable and it was supposed by the parties interested to be of great value. The company had built its plant and was operating it and such men as Doane, Pullman and Smith would not have paid 66⅔ cents on the dollar for 375 shares each, if they had not supposed them worth it.

The witness Felt was asked the following question:

"Now state, has the Pullman Iron & Steel Company ever received anything from Mr. Doane, and if so, what, in consideration of the King note which was transferred to him in the manner you have described?

A. Indirectly it possibly has, but directly I think not.

If there was anything further in the transaction by which Doane received the note, or any circumstances, or consideration moving from him to the Pullman Iron & Steel Company, please state it.

A. No; there was no consideration that the company received.

The witness evidently had in mind a consideration moving from Doane to the company, for this was the question asked. He had already detailed the whole transaction by which *it did appear that the company received a consideration for the stock it agreed to sell King.* Doane certainly did pay a consideration by issuing to King stock which the company would otherwise have been obliged to issue.

But counsel for defendant say, "Again, the question is not, whether the stock transferred to King puts him in substantially the same position he would have occupied if Felt, after purchasing stock with the money loaned him by Doane, had transferred the stock thus purchased directly to King, and himself appropriated the King note. The real question is, is he in a worse position?"

Our answer to this is, that he certainly is. For if Felt owned the note and was suing upon it the defense of fraud in the procurement of the note by Felt would be good. But in the present case Doane is a purchaser before maturity, for value, without notice of the fraud. Because of this, King's ~~positively~~ position is vastly different than it would have been in the case supposed. Counsel seem to understand this later on in their brief, for they say, "Doane cannot enforce it, unless through a purchase of the note he has acquired a position superior to either." The fact that Doane gave for the note 100 shares of his stock is exactly the same, so far as this question is concerned, as though he had paid its equivalent value in money. The question is, did he pay, give or exchange anything of value for the note, it matters not what the thing was.

The contract between King and the company was, that they would sell him for his note, or the proceeds thereof, 100 shares of stock, no particular stock. Nothing was said as to whether it should come from the 375 shares Felt was to sell, or from other stock held by the company. This was all Doane knew anything about. He did not even know that King was not to have this stock until his note was paid. What did it matter to King, or how could it affect his rights, whether his stock came from the company directly, or, as it did, from Doane *through* the company.

In either case the company would have discharged its obligation to King.

But counsel say King is in a worse position than he would have been if this transaction had not taken place, that is, if Felt or the company still owned the note, his defense of fraud in procuring the note from him in the first instance would be good. But this is always the case when a *bona fide* holder has the note. It often times works a hardship to the maker, but this he must bear, because in the interest of free circulation of commercial paper such a holder must be protected.

Counsel further say that this transaction was one to which the defendant was not a party; that by his contract he had the right to have stock issued directly from the company; that he was not obliged to take Doane's stock issued through the company; that he could, upon learning of the transaction, have refused to take the stock and demanded other stock of the company; and that the plaintiff in trying to enforce payment of this note is attempting to enforce a contract which was made without his consent and which places him in a worse position than he otherwise would have been in.

Let us see if this is not rather remote. Suppose the question of fraud in procuring the note from King to be eliminated. The company contracted to sell King 100 shares of its stock; but suppose when the time came to issue his stock the company had no stock; suppose it had all been sold, could not then the company discharge its obligation to King by buying in 100 shares of stock and issuing them to him? Could King upon learing of these facts repudiate his contract? Could he successfully defend an action brought by the company on the note on this ground? Certainly not; because the company would have done just what it contracted to do,—furnished him 100 shares of stock. The question of the right of the company to buy in this stock could not be raised in such an action. The manner in which the company procured the stock to discharge its obligation to King would be no concern of his, if it did not affect his substantial rights.

So in the case at bar, it matters not to King that the company discharged its obligation to him by causing some of Doane's stock to be issued, in place of stock actually belonging to the company. He got all he bargained for. and the transaction did not affect his substantial rights. He was entitled to two things: That he and the other stockholders should have the benefit of his note, and that he should get 100 shares of stock. The transaction by which Doane became the owner of the note was between Felt, Doane and the company. It does not concern King, except